

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 vs. NO: CR-15-4268 JB

6 ANGEL DELEON, et al.,

7 Defendants.

8 VOLUME 16

9 Transcript of Jury Trial before The Honorable
10 James O. Browning, United States District Judge, Las
11 Cruces, Dona Ana County, New Mexico, commencing on
12 February 20, 2018.

13 For the Plaintiff: Ms. Maria Armijo, Mr. Randy
14 Castellano, Mr Matthew Beck

15 For the Trial 1 Defendants: Ms. Amy Jacks, Mr.
16 Richard Jewkes, Ms. Theresa Duncan, Mr. Marc Lowry,
17 Ms. Carey Bhalla, Mr. Bill Maynard, Mr. Ryan Villa,
18 Ms. Justine Fox-Young.

19 Jennifer Bean, FAPR, RDR, RMR, CCR
20 United States Court Reporter
21 Certified Realtime Reporter
22 333 Lomas, Northwest
23 Albuquerque, NM 87102
24 Phone: (505) 348-2283
25 Fax: (505) 843-9492

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

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1 THE COURT: All right. Good morning,
2 everyone. I appreciate everybody being here and
3 ready to go on time.

4 Let me see if there's anything that we
5 need to raise before we bring the jury in. Anything
6 that the Government needs to raise, Mr. Beck?

7 MR. BECK: Your Honor, we filed a couple
8 of trial briefs over the weekend, and I think that
9 in the Court's redaction order on Friday, there was
10 a portion of Exhibit 395 that the Court said it
11 would redact if a request was made -- it would order
12 redacted if request was made.

13 And Mr. Lowry and I talked over the
14 weekend, and he asked me to redact that portion,
15 said he'd made the request, so we redacted that
16 portion. That's it.

17 THE COURT: Thank you, Mr. Beck. I got
18 your briefs this morning, so I'm taking a look at
19 them right now.

20 Mr. Lowry, did you have something?

21 MR. LOWRY: No, that's correct, Your
22 Honor. And if the Court would prefer, we could make
23 that request in writing. I'm happy to do that.

24 THE COURT: Well, I think this is
25 sufficient on the record. This is mainly to make

1 sure that it gets done and I'm not holding anybody
2 up.

3 MR. LOWRY: Your Honor, with regard to the
4 same exhibit, Government's Exhibit 395, we had
5 collaborated -- and I believe Mr. Castellano is
6 handling this next witness with regard to the
7 exhibits. So -- he's not here, but --

8 THE COURT: Is this Mario Montoya?

9 MR. LOWRY: Yes, Your Honor.

10 THE COURT: And what is the issue?

11 MR. LOWRY: Well, the issue was we thought
12 we had worked out some additional redaction
13 requests. And there is a passage -- when we left
14 Court on Friday, we were under the impression that
15 the Government was going to use a passage from this
16 particular audio from page -- I believe it was -- in
17 our mind, it was from page 22 over to 24.

18 Over the weekend, you know, we were
19 discussing with the Government what we would like to
20 get redacted if they were going to tender the entire
21 video (sic) as an exhibit, and maybe it would be
22 more pragmatic just to proffer that particular
23 video -- audio clips -- pardon me. And then late
24 yesterday afternoon, Mr. Castellano informed us that
25 he was expanding what he wanted to use to cover

1 pages 19 through the first line of page 24.

2 Now, the problem is we're getting into a
3 territory of part of the audio transcript -- it's
4 not a co-conspirator statement, it wasn't offered as
5 a James statement, and it's not -- doesn't fall
6 under any cognizable hearsay exception that we're
7 aware of. So we would ask the Court to rule on that
8 before it's offered into evidence.

9 THE COURT: What do I need to review to
10 make this determination?

11 MR. LOWRY: I don't have, you know, the
12 exact line numbers, but I think if you look at page
13 19 of Government's Exhibit 395, and you'll find that
14 at DeLeon Bates 17318.

15 THE COURT: So it's Exhibit 395, page
16 what?

17 MR. LOWRY: It would be page 20 of the
18 transcript.

19 THE COURT: Okay.

20 MR. LOWRY: DeLeon Bates No. 17318.

21 THE COURT: Line numbers what?

22 MR. LOWRY: Well, there are really no line
23 numbers on the exhibit as it's offered.

24 THE COURT: So just all of page 20?

25 MR. LOWRY: I'm assuming so, but it seems

1 like there is a conversation -- well, pardon me, let
2 me back that up. It actually starts at page 19. So
3 that's DeLeon Bates 17317, and I think it would
4 start on the fourth or the fifth Garcia entry. But
5 it appears that this could be a conversation between
6 Mr. Montoya and Chris Garcia and there's a -- I'm
7 reading tea leaves here, but I think there's an
8 interpretation that lends to their talking about
9 Javier Molina defense preparation. And so the point
10 being is this is --

11 THE COURT: Well, this is in one of the
12 transcripts I already have a copy of, so I've got
13 the tools to do what you're asking me to do.

14 MR. LOWRY: I believe you do, Your Honor.

15 THE COURT: Okay. Let me take a look at
16 it and see what I think. So I'll look at pages 19
17 through 20 on that.

18 MR. LOWRY: Yes, look through 19 probably
19 through 21, where the conversation stops.

20 THE COURT: Okay.

21 All rise.

22 (The jury entered the courtroom.)

23 THE COURT: All right. Everyone be
24 seated.

25 Well, good morning, ladies and gentlemen.

1 I hope you enjoyed your weekend. I certainly
2 enjoyed mine. I don't know about you, but as we
3 were leaving here on Friday night, it was raining,
4 and I went to El Paso. And I got to tell you, being
5 a Hobbs boy, I never liked going that route. I
6 always like going through Cloudcroft and seeing the
7 mountains. But I went that route, and got about as
8 far as Stanton on the other side of Midland, and
9 decided to spend the night. So I didn't get to buy
10 breakfast for my birthday grandson, but I saw him on
11 Saturday and we celebrated on Sunday, and I flew
12 back to Albuquerque yesterday, and drove down
13 yesterday afternoon.

14 So I hope you got some rest, and I hope
15 you enjoyed your weekend. I enjoyed mine. I did
16 leave my wife in Dallas, though, she didn't come
17 back with me. I guess she's seen enough of Las
18 Cruces. So I'll be here alone, like many of you
19 are.

20 All right. I appreciate everybody being
21 back on time, ready to go. I appreciate that of the
22 parties and counsel, as well. Everybody has been
23 very good about keeping to the schedule, and I think
24 we are on schedule, and I appreciate that, as well,
25 and I'm sure the jury does, as well.

1 All right. Mr. Castellano, does the
2 Government have its next witness or evidence?

3 MR. CASTELLANO: Yes, Your Honor.

4 MS. ARMIJO: Your Honor, we call
5 Dr. Leslie Kastenbaum.

6 MR. CASTELLANO: Hamilton.

7 MS. ARMIJO: Hamilton.

8 THE COURT: Who is it, Ms. Armijo?

9 MS. ARMIJO: The medical examiner, Leslie
10 Hamilton.

11 THE COURT: Ms. Hamilton, if you'll come
12 up and stand next to the witness box on my right,
13 your left, before you're seated my courtroom deputy,
14 Ms. Standridge, will swear you in.

15 LESLIE HAMILTON,
16 after having been first duly sworn under oath,
17 was questioned, and testified as follows:

18 THE CLERK: State and spell your name for
19 the record.

20 THE WITNESS: My name is Dr. Leslie,
21 L-E-S-L-I-E, Hamilton, H-A-M-I-L-T-O-N.

22 THE COURT: Dr. Hamilton.

23 Ms. Armijo?

24 MS. ARMIJO: Thank you, your Honor.
25

1 DIRECT EXAMINATION

2 BY MS. ARMIJO:

3 Q. Dr. Hamilton, where are you employed?

4 A. I'm employed at Alberta Health Services in
5 Calgary, Canada.

6 Q. And what do you do there?

7 A. I'm a hospital-based pathologist,
8 practicing neuropathology and hospital autopsy
9 pathology.

10 Q. And what is your educational background?

11 A. After I completed high school, I attended
12 four years at the University of Alberta, and
13 completed an undergraduate degree, obtaining a
14 Bachelor's of Science. Following that, I completed
15 four years of medical school at Queens University in
16 Kingston, Canada. Following that, I went to
17 Calgary, and I completed five years of specialty
18 training in anatomic pathology. That was followed
19 by two years in subspecialty training in
20 neuropathology. And following that, I completed a
21 fellowship in forensic pathology.

22 Q. And where did you do the forensic
23 pathology?

24 A. That was in Albuquerque at the University
25 of New Mexico.

1 Q. And what were those years?

2 A. That was from June -- or July 2013 to June
3 2014.

4 Q. And since then, what has been your
5 employment?

6 A. I've been employed in Calgary at Alberta
7 Health Services since August 2014.

8 Q. You indicated that you work for a
9 hospital. What do you do for the hospital?

10 A. I do neuropathology and hospital-based
11 autopsy pathology. So the majority of that is
12 looking at tissue specimens from living patients who
13 have had surgical biopsies, primarily in the realm
14 of neuropathology, so most of it is looking at brain
15 tumors. And then in addition to that, I do
16 full-body autopsies on individuals who died of
17 natural causes.

18 Q. Now, what is pathology?

19 A. Pathology is a specialty of medicine that
20 is focused on the diagnosis of disease by looking at
21 the bodily tissues, both with the eye and under the
22 microscope.

23 Q. And what is forensic pathology? How does
24 that differ?

25 A. Forensic pathology is a subspecialty of

1 pathology where we use the knowledge from pathology
2 and apply it to medical/legal problems.

3 Q. And as far as forensics, do you continue
4 to do that in your field today?

5 A. I -- I continue to be a consultant on
6 forensic matters. I'm part of a group in private
7 practice, a group of forensic pathologists who do
8 primary and secondary consults on forensic matters.

9 Q. And do you have -- how many -- do you have
10 any certifications in Canada or the United States?

11 A. Yes.

12 Q. Tell us about that.

13 A. So, for anatomic pathology, I'm board and
14 exam certified both in Canada with the Royal College
15 of Physicians and Surgeons of Canada, as well as the
16 American Board of Pathology and Anatomic Pathology.

17 I have also completed examinations
18 specifically for neuropathology in both Canada and
19 the United States. And I -- and I've completed my
20 examination certification for forensic pathology in
21 the United States in the American Board of
22 Pathology.

23 MS. ARMIJO: And, Your Honor, at this
24 time, I would like to tender Dr. Hamilton as an
25 expert in forensic pathology.

1 THE COURT: Any objection from the
2 defendants?

3 MS. FOX-YOUNG: No objection.

4 MS. DUNCAN: No, Your Honor.

5 MS. BHALLA: No, Your Honor.

6 THE COURT: All right. Dr. Hamilton will
7 be able to offer opinion testimony in the field of
8 forensic pathology.

9 BY MS. ARMIJO:

10 Q. Dr. Hamilton, going back to your days at
11 UNM, is it fair to say that you were, as a Fellow,
12 you were the student, so to speak, and Dr.
13 Kastenbaum, for the matter that you're going to be
14 testifying here today, was the one that was
15 supervising you?

16 A. Correct.

17 Q. And did you perform the autopsy on Javier
18 Enrique Molina?

19 A. I did.

20 Q. And did you prepare a report in connection
21 with that?

22 A. Yes.

23 Q. And are you the one that actually
24 physically examined the body, examined the wounds,
25 and determined the cause and manner of death which

1 was then reviewed by Dr. Kastenbaum?

2 A. Yes.

3 Q. And I'm going to -- first, tell us about
4 what type -- what do you do as far as the procedure
5 of the autopsy? Did you first do a visual
6 examination, did you then -- what was next step?

7 A. Well, autopsy is a physical examination of
8 a deceased individual to document any natural
9 disease or injury and ultimately determine the cause
10 of death. It involves multiple steps. The first
11 step is examining the body externally, and looking
12 for any signs of natural disease, injury.

13 We then proceed to look inside the body,
14 as well. So we do a dissection, looking at the
15 major inner organs, body cavities, again looking for
16 any signs of natural disease or injury.

17 As part of that, we do extensive
18 documentation, so I write out my findings. So we
19 also take photographs to document the injuries, and
20 then ultimately I put that together in a report.
21 And because of the time I was working as a Fellow in
22 training, all of these steps were supervised by Dr.
23 Kastenbaum.

24 And so although I did the autopsy and
25 wrote up my findings, they were then reviewed by Dr.

1 Kastenbaum and a report was issued and a death
2 certificate was issued following that.

3 Q. Now, did you determine -- and in doing so,
4 do you take photographs -- not you, personally, but
5 do you -- at your direction, are photographs taken?

6 A. Yes.

7 Q. And do you determine a cause, manner, and
8 mechanism of death?

9 A. Yes.

10 Q. How many different types of manners of
11 death are there?

12 A. There are five.

13 Q. And what are those five?

14 A. The manner of death is a label used to
15 describe how an individual came about to die. So
16 the main -- major labels that are used are Natural,
17 Suicide, Accident, Homicide, and if we can't
18 determine any of those levels with any degree of
19 certainty, we sometimes use Undetermined, as well.

20 MS. ARMIJO: At this time, we're going to
21 move into admission 143 to 161, without objection.

22 THE COURT: Is that correct, no objection
23 from the defendants?

24 MS. DUNCAN: No, Your Honor.

25 THE COURT: Without hearing any objection,

1 Exhibits 143 to 161 are admitted without objection.

2 MS. ARMIJO: I'm also going to move 166
3 and 167, which are diagrams, without objection.

4 THE COURT: Any objection? Not hearing
5 any objection, Government's Exhibits 166 and 167
6 will be admitted into evidence.

7 (Government's Exhibits 143-161, 166, 167
8 admitted.)

9 BY MS. ARMIJO:

10 Q. Doctor, can you tell the jury a little bit
11 about your physical observations of Mr. Molina
12 before you started the autopsy? Did you notice any
13 wounds?

14 A. Yes. So there were a number of stab
15 wounds on the body.

16 Q. And did you do anything to assist you with
17 how you were going to proceed in order to deal with
18 the number of wounds?

19 A. Given the number of stab wounds, I grouped
20 them based on how they were clustered on the body.

21 Q. And did you come up with different groups?

22 A. Yes.

23 Q. And I'm going to display Exhibit Number
24 167 at this time. What is it that we're looking at,
25 Doctor?

1 A. So this is a diagram I created at the time
2 of autopsy that documented the injuries that I saw
3 on the body.

4 Q. Okay. And can we start going through
5 them? It looks like you have them alphabetical; is
6 that correct?

7 A. Yes. So the major stab wounds I labeled
8 with letters to help me with identifying them as I
9 went through the report in matching the photographs
10 to the written descriptions of them.

11 Q. How many stab wounds were there?

12 A. There were 43 stab wounds.

13 Q. And in addition to the stab wounds, I see
14 you labeled something on the head, A. What is that?

15 A. A is an incised wound.

16 Q. What's an incised wound?

17 A. An incised wound is essentially a cut. So
18 if you have a sharp weapon, and you draw it along
19 the skin, and it creates a wound that is longer
20 along its skin surface than its depth, we refer to
21 that as an incised wound, versus a stab wound, which
22 is deeper than it is longer on the skin.

23 Q. And if we can display 144. Is that what
24 you were referring to as A?

25 A. Yes.

1 Q. All right. And then if we could go back
2 to the previous exhibit, sorry. Now, I guess going
3 to B. What was group B?

4 A. B was a cluster of stab wounds that were
5 on the midline of the chest.

6 Q. And I'm going to show now Exhibit Number
7 146. What are we seeing here?

8 A. These are the stab wounds.

9 Q. Now, did Mr. Molina's body come this
10 clean, or as part of the process that you were
11 talking about earlier, was his body cleaned in order
12 for you to get a good look at the wounds?

13 A. Correct. We do an initial examination
14 referred to "as is," how the body was received in
15 our office, and then we clean the body in order to
16 get a better look at the wounds.

17 Q. And if we could go back to 167. Now, in
18 regard to 167, it looks like B is in the middle of
19 the chest?

20 A. Yes.

21 Q. And what would you say, if there is any
22 significance to group B? Did they hit any organs,
23 was it substantial?

24 A. There was -- so groups B, C, and H,
25 although I grouped them together on the external

1 aspect of the body, once I went inside and looked at
2 the inside of the body, many of these defects
3 crossed over. And so groups B, C, and H all had
4 significant injuries inside associated with them.

5 Q. What sort of injuries did they have
6 associated with them?

7 A. So there was defects to the sternum or the
8 breast plate, the left side of the ribcage. There
9 was defects to the left lung on that side. There
10 was numerous defects to the sac around the heart, as
11 well as the heart itself. There would be defects
12 associated with the aorta, the major blood vessel
13 that carries blood from the heart to the rest of the
14 body. The esophagus, the stomach, there was also
15 900 milliliters of blood within the left chest
16 cavity around the lung.

17 Q. And what sort of impact would this have on
18 Mr. Molina's body upon receiving these blows?

19 A. They are fatal injuries.

20 Q. And so when you group that with B, C, and
21 H, I'm going to show Exhibit Number 145. Does that
22 appear to have B and C, as well?

23 A. Correct.

24 Q. All right. And then Exhibit Number 150.
25 Is this what you were referring to as H, previously?

1 A. Correct.

2 Q. Now, I'm going to show Exhibit Number 143.
3 Is this a different view?

4 A. Yes. This is looking at the left side of
5 the body, and again showing that cluster of stab
6 wounds on the left chest.

7 Q. If you could go back to 167. Now, was
8 there also some injuries on the left arm?

9 A. Yes.

10 Q. And what sort of injuries were there?

11 A. There were stab wounds as well as incised
12 wounds or cut wounds.

13 Q. Okay. Now, I'm going to go to Exhibit
14 Number 149. Now, looking at F, it appears, at least
15 visually, to look different than E. Is that where
16 you were talking about some were incised as opposed
17 to stabs?

18 A. Both of these are both stab wounds --

19 Q. Okay.

20 A. -- have different shapes to them.

21 Q. Okay. And then -- let's see, if you'd go
22 back to 167. Now, you also have a group that is
23 lower left, M. What the sort of injury do those
24 depict?

25 A. Those are on the left side of the abdomen,

1 and they were associated with defects that went
2 through the abdominal wall. And there was a defect
3 in the colon on that side, as well as the left
4 kidney, and a muscle near the left kidney that's
5 quite deep called the psoas muscle.

6 Q. Just so we're clear, when you say "defect"
7 what do you mean?

8 A. I'm talking about wound tracks related
9 to -- consistent with stab wounds.

10 Q. And if we could go to Exhibit Number 151.
11 And what is it that we're looking at?

12 A. These are the group of stab wounds that I
13 labeled M on the left side of the abdomen.

14 Q. And I believe 153, as well?

15 A. Yes. That's a closer up view of some of
16 the stab wounds in that area.

17 Q. Now, if we could go back to 167. Now, you
18 have something labeled L and R. What is it that you
19 were referring to there?

20 A. Those are again --

21 Q. I guess -- let's start with -- oh, that's
22 left and right, so that is not -- so this is
23 different from your numbering, correct, just so
24 we're clear; correct?

25 A. That's labeling the side of the body.

1 Q. Okay. Because we do have an L up in the
2 body, but that is different from the other left and
3 right; correct?

4 A. Correct.

5 Q. So when we're looking at diagram 167, did
6 you find anything on Javier Molina's hands?

7 A. No.

8 Q. And it appears -- and I'm circling his
9 legs, that you have some notations there. What are
10 you referring to?

11 A. There were some small bruises on the legs.

12 Q. Now, in reference to the bruises, did any
13 of them appear to have any sort of puncture or
14 association with a sharp object?

15 A. Not the ones on the lower legs.

16 Q. Then looking at the back, it appears that
17 you have some notations there, as well. What is it
18 that was on the back?

19 A. There was a sharp wound on the right,
20 upper back.

21 Q. And what -- what did you label that one?

22 A. That is labeled as N.

23 Q. If we could go to Exhibit Number 157,
24 please. Is that the picture on the back, as well?

25 A. Yes.

1 Q. And then I saw on the diagram that you had
2 an O on the back, as well -- or let's go to Exhibit
3 167.

4 A. Yes. That was a second one, second sharp
5 wound on the right, upper back.

6 Q. If you could go to Exhibit 158. And does
7 that appear to be the wounds on the back?

8 A. Correct.

9 Q. Now, I'm going to show you Exhibit Number
10 161. And what is it that we're looking at here?

11 A. This is a picture of the lower legs from
12 the front of the body.

13 Q. All right. Let's go back to 167. Now,
14 you indicated that these injuries were fatal; is
15 that correct?

16 A. Yes.

17 Q. Now, if there had been a doctor on site at
18 the Southern New Mexico Correctional Facility to be
19 able to work on Mr. Molina within five minutes of
20 this, do you think it would have been possible to
21 save him, or were the injuries just too extensive?

22 A. The injuries were too extensive.

23 Q. Now, what was the mechanism of that?

24 A. I think there were multiple mechanisms at
25 play. So the mechanisms are the physiological

1 abnormalities of the body that ultimately lead to
2 death. So there's -- essentially the train of
3 events that starts with the ultimate cause of death.

4 So in regards to Mr. Molina, he had a
5 significant amount of blood in his left chest cavity
6 at 900 milliliters, which would have compressed the
7 lung. Associated with that, I did identify air
8 within both chest cavities on imaging that I did
9 prior to the autopsy. And there was also numerous
10 defects of the heart, which would have affected the
11 ability of the heart to function and pump blood to
12 the rest of the body.

13 Q. And did you do a toxicology?

14 A. Yes.

15 Q. Explain what a toxicology is.

16 A. So a toxicology testing, we test fluids,
17 in this case blood, looking for signs of alcohol or
18 common drugs of abuse.

19 Q. And did you find any in his system?

20 A. No, I did not.

21 Q. You said, "Common drugs of abuse." Would
22 you have tested for Suboxone?

23 A. No.

24 Q. So you would not have been able to tell
25 whether or not he had that in his system?

1 A. No.

2 Q. And did you determine the cause and manner
3 of death?

4 A. Yes.

5 Q. And what were those?

6 A. The cause of death was stab wounds, and
7 the manner of death was homicide.

8 MS. ARMIJO: Thank you, pass the witness,
9 Your Honor.

10 THE COURT: Thank you, Ms. Armijo.

11 Any of the defendants have
12 cross-examination? Ms. Fox-Young?

13 MS. FOX-YOUNG: No, questions, Your Honor.

14 MS. DUNCAN: No questions, Your Honor.

15 MS. BHALLA: No, Your Honor. Thank you.

16 THE COURT: Ms. Jacks.

17 MS. JACKS: No, Your Honor. Thank you.

18 THE COURT: All right. Dr. Hamilton, you
19 may step down.

20 Is there any reason she cannot be excused
21 from the proceedings?

22 MS. ARMIJO: No, Your Honor.

23 THE COURT: Anyone need her again?

24 All right. You're excused from the
25 proceedings. Thank you for your testimony.

1 All right. Does the Government have its
2 next witness or evidence?

3 MR. CASTELLANO: Your Honor, the United
4 States calls Mario Montoya. May we approach before
5 we call him?

6 THE COURT: You may.

7 (The following proceedings were held at
8 the bench.)

9 MR. CASTELLANO: So Mario Montoya is a
10 witness for whom we'll have recordings and the
11 transcripts. The Court had ruled I think last week
12 that one section would not be allowed, but the
13 parties could actually argue about its
14 admissibility. And so this is Government's Exhibit
15 334. There is a portion that the defense had
16 objected to, and that referred to Mr. Baca saying,
17 "If Stoner comes around some bullshit like that,
18 we're going to blast his ass."

19 And the second statement I think was:
20 "And the same thing with Boxer, if he starts coming
21 at you like that the fucking Box or whatever the
22 fuck, just go ahead and fucking smash him, or
23 whatever."

24 So the Court initially ruled that the
25 admissibility wasn't quite sure to overcome a 403

1 objection, so I'm arguing to the Court this morning
2 that it is admissible and relevant in that --

3 THE COURT: Remind me what page that's on.

4 MR. CASTELLANO: It's on page 17 of the
5 transcript. And the majority of this transcript --
6 this is what I have circled in red or blocked out in
7 red -- the majority of the transcript involves Mr.
8 Baca talking about reorganizing and getting members
9 back in line. And so that is part of the
10 organization process. And I'll show the Court
11 another section here in a little bit where he talks
12 about doing similar things. What he's arguing is
13 that they should be thinning out the herd and
14 getting the brothers together and getting rid of
15 brothers who aren't any good anymore or who are
16 causing trouble.

17 And when you get through with that, I'll
18 show you another section which is similar. On page
19 21 of that transcript there is a part that talks
20 about Mr. Baca saying: If you have a hater that
21 needs to be dealt with, that needs to be handled,
22 that they should handle it. So this is all along
23 the same lines of him talking to Mr. Montoya about
24 organizing, restructuring, coming together and
25 getting rid of those who are not on board with the

1 team. So that's the consistent theme throughout
2 this transcript and that's why I think that that
3 portion is relevant.

4 THE COURT: Any thoughts?

5 MR. LOWRY: Well, Your Honor, it's not
6 quite clear what he means by -- I thought we were on
7 the other exhibit.

8 THE COURT: It's on 17.

9 MR. LOWRY: Right.

10 MR. CASTELLANO: It's marked.

11 MR. LOWRY: Your Honor, it's just not
12 clear what "blast his ass" -- when I read that, I'm
13 thinking of the Harry Potter Howler. It just means
14 scream and yell and holler at him. It could be
15 anywhere from that to what the Government would want
16 to argue is murder. I think it wasn't clear exactly
17 what he's talking about. And when Stoner comes
18 around talking some bullshit like that, it sounded
19 to me like they were talking about drug deals,
20 because that was Chris Garcia's thing. He was a
21 drug dealer. So what he was suggesting, just to cut
22 them off.

23 THE COURT: How quickly is this going to
24 come up? I'm still not seeing the first one. The
25 second one maybe I could be convinced on. But how

1 quickly is this transcript going to come up?

2 MR. CASTELLANO: Well, we're going to go
3 through the initial part of his testimony, and then
4 toward the end we'll probably end with the
5 recordings and transcripts. So it will be --

6 THE COURT: Sometime in the middle of the
7 transcripts?

8 MR. CASTELLANO: -- probably the second
9 recording, I think.

10 THE COURT: The second recording.

11 MR. CASTELLANO: Yes, and this section --
12 I've cut this entire thing -- it's about 52 minutes
13 long, but I've cut it into 11 clips, and I have this
14 as a distinct clip, so we can quote off it if we
15 need to.

16 THE COURT: Let me retake a look at it.
17 I've got that transcript, so you can hang on to that
18 page. Let me retake a look at it.

19 I guess I'm a little bit more persuaded.
20 I'm still not seeing that first one. But let me
21 reread it a little bit.

22 Then the second one, I guess, I am seeing
23 a little bit of relevance as to his plan and design.

24 MR. CASTELLANO: And I'll ask the Court
25 to, as you read the transcript, look at references

1 to Stoner and Boxer, and the fact that they may be
2 considered problem children who need to be dealt
3 with.

4 THE COURT: All right.

5 MR. CASTELLANO: Other than that, I think
6 we're ready to begin with Mr. Montoya.

7 MR. LOWRY: Randy, I did approach the
8 judge this morning about Exhibit 395. And I don't
9 know if we can take that up at the first break or if
10 you think you're going to get to the transcript
11 before then.

12 MR. CASTELLANO: That's the exhibit I'm
13 thinking of. I only have two sections, pages 19
14 through 23 of that section.

15 MR. LOWRY: Right. And we had thought
16 that you were just going to use pages 22 to 24, and
17 that's what --

18 MR. CASTELLANO: That's right.

19 THE COURT: Let me take a look at that.

20 MR. LOWRY: So it would be 19 through 23.

21 THE COURT: Approach before you get into
22 that, and I'll try to take a look at that.

23 MS. JACKS: I just want to note our
24 continuing objection based on the Fifth and Sixth
25 Amendment, and the fact that it's hearsay. Mr.

1 Sanchez is not a member of the conspiracy that's
2 being proven up here, so I'm assuming, based on the
3 Court's prior rulings, that this is going to be
4 limited in some fashion.

5 THE COURT: Yeah, I don't see any reason
6 to not give the instruction here, do you? None of
7 it is going to anything other than...

8 MR. CASTELLANO: I think that's probably
9 right.

10 THE COURT: The agreement has been we're
11 not going to try to parse these tapes. I'll parse
12 testimony like we have with the James letters and
13 the non-James, but I think the agreement was we
14 wouldn't try to parse these tapes because it gets
15 too tricky. At the appropriate time tell me when
16 you want it. Some of this stuff is going to be
17 background information. At the appropriate time,
18 you can ask for it.

19 MS. JACKS: I want to note -- are you guys
20 in also? I think they also join.

21 THE COURT: Which are you going to need a
22 ruling on? 395 or 434 first?

23 MR. CASTELLANO: 434.

24 (The following proceedings were held in
25 open court.)

1 MR. CASTELLANO: Thank you, Your Honor.
2 With that, the United States calls Mario Montoya.

3 THE COURT: All right. Mr. Montoya, if
4 you'll come up and stand next to the witness box
5 right here in front of you, and before you're
6 seated, if you'll raise your right hand to the best
7 of your ability there, Ms. Standridge will swear you
8 in.

9 MARIO MONTOYA,
10 after having been first duly sworn under oath,
11 was questioned, and testified as follows:

12 THE CLERK: Please be seated. State and
13 spell your name for the record.

14 THE WITNESS: Mario Montoya. M-A-R-I-O.
15 M-O-N-T-O-Y-A.

16 THE COURT: Mr. Montoya. Mr. Castellano.

17 MR. CASTELLANO: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. CASTELLANO:

20 Q. Good morning, Mr. Montoya. Can you tell
21 the members of the jury whether you've ever been a
22 member of the SNM Gang?

23 A. Yes, sir. Yes, I have been.

24 Q. When did you become a member of the gang?

25 A. Early '90s.

1 Q. Prior to that time, had you been a member
2 of any other gang?

3 A. I was a West Side Loco, Albuquerque.

4 Q. That was an Albuquerque gang?

5 A. Yes.

6 Q. And where were they largely located in the
7 City of Albuquerque?

8 A. On the West Side.

9 Q. When did you join that gang, the West Side
10 Locos?

11 A. I grew up on the West Side, in the South
12 Valley, so I never really joined. I was just -- I
13 grew up there.

14 Q. Did you kind of run with those guys, then?

15 A. Yeah.

16 Q. When you joined the SNM Gang, were you in
17 prison or outside of prison?

18 A. I was in prison.

19 Q. What was it that got you into prison?

20 A. I had a good friend, James Yoakum, that
21 was in the boys' school with me also. He was also
22 from the same gang, but from a different city, so we
23 were real close. We ended up in prison together,
24 both young; we really didn't know anything. And he
25 had got locked up for fighting. He went to the

1 North facility, the lockup unit.

2 Q. When you say the North facility, is that
3 the North facility in Santa Fe?

4 A. Yeah.

5 Q. And what happened to him?

6 A. He was there for disciplinary, for
7 fighting, or -- I don't know if they had SEG'd him
8 or what. But he was there. The guy that told on
9 him, I beat him up, too, a friend of mine. James
10 was a friend of mine. And I thought that was the
11 thing to do. I ended up at the North also. And I
12 was there with him, Leroy Torrez, a couple other
13 guys that I knew that were already SNM. James
14 wasn't when he left the Main, but I guess when he
15 went to the North, it turned out that his dad was
16 one of the leaders of the SNM. I didn't really know
17 too much about it, to tell you the truth.

18 Q. And then what was your relationship with
19 them in terms of how you got brought into the gang?

20 A. James and Leroy Torrez, Jr., asked me if I
21 wanted to be in that gang. And at first I said no.
22 But then the next day I thought about it. I said,
23 "Yeah, yeah," you know what I mean. I thought I was
24 going to be somebody. I said, "Yeah."

25 So I started calling them carnal, they

1 started calling me carnal. And I got out, went to
2 the South, came to SNM from then.

3 Q. Now, when you say "the South," is that the
4 South facility in Santa Fe?

5 A. Yes, sir.

6 Q. And why were you in prison at that time in
7 the first place?

8 A. Mostly kind of drugs, a residential
9 burglary. I believe auto burglary, burglary tools.

10 Q. So what happens when you get to the South
11 facility?

12 A. I'm there for a while and people start
13 questioning who brought me in, and I tell them. And
14 they're, like, "No, them guys can't bring you in.
15 You need five votes."

16 So at this point, I don't know what's
17 going to happen. Really, I'm freaking out a little
18 bit. I had gotten close to a few people: Bobby
19 Ortega, Julian Romero, Billy Garcia; I think Ruben
20 Hinojos, and...

21 Q. What was their response at the South to
22 this?

23 A. Some of them didn't like that. But I was
24 close to Julian, and Julian told me, "From now on,
25 when people ask you who brought you in, say it was

1 me, Bobby, and Billy."

2 And I don't really remember the other
3 people. It was a long time ago. I remember Julian
4 the most, and Bobby Ortega. Those were the ones I
5 was really close to.

6 Q. If you recall, who were the leaders of the
7 SNM at that point in time?

8 A. Angel Munoz, Pup; Ramon Clark, Henry
9 Clark. Felipe Cordova, but he was out of state. I
10 never met him.

11 Q. Felipe Cordova?

12 A. Yeah. I believe he was out of state or
13 out of prison. I hadn't heard his name until way
14 later, but...

15 Q. About what time frame is this when you
16 come in?

17 A. Early '90s. Probably '94, '93.

18 Q. When you first come into the SNM, what are
19 you doing for the gang?

20 A. Mostly little rackets that Julian would
21 come up with: Go make sure people were kicking
22 in -- if anybody is getting dope in the visits or
23 whatever, we would -- Julian and them would demand a
24 third. Sometimes they would do it in a sneaky way;
25 they would send us to go take their dope and they

1 would come crying to Julian about it. Julian would
2 act like he reprimanded us and told us not to do
3 that anymore, and he'd tell them, "Just make sure I
4 get it, and they'll stay away from you. I'll keep
5 the youngsters off."

6 Q. In other words, "If you give me one-third,
7 I'll call off the dogs"?

8 A. Yes.

9 Q. Who were you taking the drugs from? SNM
10 members, non-SNM members, or both?

11 A. Non-SNM members. SNM members, at that
12 time you couldn't do that to an SNM member. That
13 would be disrespectful, and it could come down on
14 you, whether you were an SNM member or not.

15 Q. And would this be the equivalent of taxing
16 other people in the prison for drugs?

17 A. That's what we would call it. That's the
18 word for it, taxing. That would be the joke, that
19 we were like a small government.

20 Q. Who would collect the drugs with you?

21 A. It would be different people, mostly, but
22 whoever I was close to, really. If I wanted to get
23 high, which I did, and I was a drug addict, I would
24 make sure I paid attention to who was getting the
25 dope and I would make sure I would be aggressive.

1 Whoever I hung out with is usually who they would
2 pair me with; like you and Ruben, since you and
3 Ruben kick it together, you guys go post up by the
4 visit. And when they come out, take them into the
5 library, and Julian and them would be in there
6 waiting. And me and Ruben would just make sure they
7 got in there, and make sure we looked mean and mad,
8 and Julian would play the nice guy.

9 Q. Why would you hang out by the visits in
10 order to figure out who was getting drugs?

11 A. To make sure we caught them when they came
12 out of the visit before they got to the unit. And
13 Julian would take them to the bathroom, make them
14 pull it out right then and there.

15 Q. And so when you're watching the visits,
16 are you then watching to see what visitors are
17 bringing in drugs for the inmates?

18 A. We pretty much already knew who was going
19 to get dope. It's a small environment, so it's
20 obvious. Somebody might get past once or twice.
21 But once it's figured out they're getting dope, then
22 we know who it is, and we're just waiting for them
23 to come out.

24 Q. And as a younger member of the SNM, what
25 was your relationship with the corrections officers?

1 A. Not -- not good. At that point I get
2 along with some of them, but at that point, inmates
3 ran the prisons totally. The corrections officers
4 just made sure that we didn't leave, or we didn't
5 kill one of them, or hit one of them, or stab one of
6 them, or fight with one of them. They didn't really
7 care what happened to the population or what we were
8 doing.

9 Q. When you joined the gang, were you given
10 any kind of rules that you should follow?

11 A. Yeah.

12 Q. What were they?

13 A. No snitching; don't talk to the cops, like
14 be buddy with them; no child molesters allowed;
15 don't mess with each other's wives or girlfriends;
16 show each other respect; never take anybody's side
17 against a brother; follow orders. If you're asked
18 to do something, you do it. And that's all there is
19 to it.

20 Q. What was the consequence for not following
21 an order?

22 A. Then you would probably be hit. At that
23 point, Angel was in charge, and he didn't believe in
24 violations or putting your hands on another brother.
25 He'd call that animosity amongst each other and

1 would drive wedges. So that was either life or
2 death. That was the only thing. Or you'd be told
3 not to do that.

4 Q. When you say "a violation," what are you
5 referring to?

6 A. Later on, some of the other guys and these
7 boards, all this other stuff that got started -- if
8 you did something that this board didn't like, or if
9 you were the one that got to -- made look bad in a
10 situation -- because sometimes it wasn't even the
11 person's fault -- they would send four or five other
12 brothers to go beat him down. And they weren't
13 allowed to fight back or nothing. So a lot of us
14 didn't agree with that. I didn't agree with that.

15 Q. So that could be discipline short of
16 death?

17 A. Yeah, or they would put you on a mission.
18 They would tell you, "All right, so now, you did
19 this. Whatever you did wrong, whatever it was,
20 you -- now, in order for you to make up for that,
21 you're going to have to do this, and you're going to
22 have to go on this mission, or whatever."

23 It would be a means of control. Because a
24 lot of guys at that point that were in, they weren't
25 gangsters; they were just trying to get high or

1 trying to look -- I mean, look the part, so they
2 were terrified of doing stuff like that. They
3 didn't want to do nothing. So they would just try
4 to follow the rules or try to make sure they made
5 whoever was in charge at that point happy.

6 Q. When you say "a mission," if you would
7 task somebody to go do something, do they often use
8 the term "mission"?

9 A. That was the term, yes.

10 Q. What about a requirement for making your
11 bones?

12 A. When I got in, I was told that it had to
13 be a murder; that you had to kill somebody to get
14 in. But I know a lot of people didn't. And I know
15 sometimes just beating somebody up was considered
16 enough, depending on who you were or who is
17 sponsoring you, or who wanted you in. Sometimes
18 some people didn't do nothing.

19 Q. What did you have to do to earn your
20 bones?

21 A. I was one of the guys that brought in a
22 lot of dope, so I got away with it pretty lightly.
23 I got in a few fights. I was taxing people for
24 Julian, and stuff like that. And at that point I
25 was bringing in dope, so nobody wanted me to get

1 locked up. I didn't really have to do too much. I
2 was expected to. If a brother is in a fight right
3 there by me, I had to jump in for him and stuff.
4 But mostly, it was just fighting and taking things
5 from people for the gang and stuff like that.

6 Q. In terms of your mission with the
7 corrections officers, were you supposed to admit
8 your SNM membership to them?

9 A. No, no. The rule was: You never admit it
10 to a cop, and you never deny it to a pinto, an
11 inmate. You never admit it to another convict -- I
12 mean, never deny to it another convict.

13 Q. You used the term "pinto." What does that
14 mean?

15 A. Convict.

16 Q. And where did the gang -- what importance
17 would the gang have to people in terms of the gang
18 versus family?

19 A. Excuse me?

20 Q. What importance did the gang have when it
21 came to the gang versus someone's own family?

22 A. I didn't catch the second word.

23 Q. Importance.

24 A. Oh, importance. The gang came before your
25 family. It came before everything. And a lot of

1 us, when we went to prison, we didn't have nothing,
2 you know what I mean? We were drug addicts when we
3 got there, and a lot of us didn't have nothing to
4 look forward to on the streets. We were gang
5 members on the streets. And when we got there, we
6 continued to be gang members. And so it didn't --

7 Q. You talked about bringing in drugs to the
8 facility. Did you -- in 1996, were you sentenced
9 for bringing contraband into a place of
10 imprisonment?

11 A. Yes, I was.

12 Q. What happened there, and why did you do
13 that?

14 A. I was bringing in a lot of drugs, like I
15 said. I was pretty good at coming up with ways or
16 talking people into getting dope. I like to get
17 high, so I'd bring it in mostly for my own use, but
18 also for the gang. I couldn't get dope and not help
19 people out in the gang, because it's not -- it's a
20 dog-eat-dog world in there. If you're not part of
21 the pack, then you're going to get eaten.

22 Q. So was it part of your responsibility as a
23 gang member, then, to help bring drugs into the
24 prison?

25 A. If I had a way to bring dope in, or I

1 could develop a way to bring dope in, yeah, it was
2 pretty much my responsibility to do that. And also,
3 I wanted to get high.

4 Q. When you first got to prison, about how
5 long did you stay there?

6 A. I went for an evaluation in '91, then I
7 believe in '93 -- I'm not really sure -- I believe
8 in '93 I went back on two three-year sentences,
9 turned it into a little bit longer.

10 Q. At some point did you get out of prison in
11 approximately 2001?

12 A. Yes.

13 Q. And what did your brother do for you when
14 you got out of prison?

15 A. What did my brothers do for me when I got
16 out?

17 Q. Yeah. Did he try to give you a job?

18 A. Oh, my real brother, my blood brother.
19 Yes, my brother -- when I got out, one of the best
20 things anybody ever did for me, actually, he
21 opened -- he had a small -- I didn't know he did it.
22 He asked me if I wanted a job, and he had a small
23 battery shop and tire shop. And I worked there for
24 about two or three weeks. Then Monday, I showed up
25 to work, and he told me I had to go back to my job,

1 "This is your job." But at that point I was still
2 using drugs. I was still into the gang and I pretty
3 much screwed it up.

4 Q. All right. So you said you screwed it up.
5 Someone had tried to help you out, and what was the
6 result of how long you stayed there and how well you
7 did at that business?

8 A. I started just hiring people that I knew,
9 stuff like that, to do little odd jobs, and not
10 working, really. And I got another job at a glass
11 company, so it was more structured. I mean, it had
12 benefits; I didn't have to manage by my own money,
13 because I really didn't know how. So I went to work
14 for Southwest Glass at that point. And business
15 didn't -- it went good at first, but I just wasn't
16 prepared for that.

17 Q. So about how long did you stay out of
18 prison following your release?

19 A. Maybe eight months.

20 Q. And what happened then?

21 A. My first violation was for a dirty urine,
22 I think, and I went back to prison. At that time,
23 it was a zero tolerance policy, especially towards
24 gang members. Dirty urine, or whatever, first time,
25 you're gone. I think I went back for dirty urine.

1 Q. For dirty urine, that means you tested
2 positive on a urinalysis test?

3 A. Yes.

4 Q. Did you also pick up a new charge for
5 possession of heroin?

6 A. I don't think it was that time. I think
7 it was after I got out.

8 Q. Did you eventually pick up a charge for
9 possession of heroin?

10 A. Yes, I did.

11 Q. At some point, did you start dealing drugs
12 even on the streets?

13 A. Yeah, but not till way later. And all
14 that time, I was just a user. You know, I was
15 struggling to stay clean. I didn't want to go back
16 to prison. I was married to my ex-wife, Kathy. And
17 she would get really insecure. I didn't figure this
18 out till way later. I thought it was the best thing
19 in the world. She would bring me dope when I was
20 locked up. She didn't care if I stayed home high
21 all the time. She was really insecure. She wanted
22 me to be in prison, for me to need her. She would
23 buy me dope and then call my P.O. and say I was
24 dirty.

25 Q. So at least in prison, she knew where you

1 were; right?

2 A. Yeah. Yeah. So the next time I got out,
3 I started staying away from her. And I met someone
4 else. I met my current wife. And I was in the
5 process of leaving her; she started calling the cops
6 and saying that I beat her up. My new girlfriend
7 would bond me out, and they would tell me, "Stay
8 away from that girl." They didn't believe me.

9 Eventually she admitted to it, but yeah,
10 she got me and my new wife arrested. Supposedly, we
11 had kidnapped her and beat her up. And that's when
12 I picked up the possession charge. I was still
13 getting high. And she would buy me dope, lure me
14 back.

15 So she bought me some dope, rented a hotel
16 room, and I got high and left the syringe and stuff
17 on their counter. She went to the bathroom to take
18 a shower. The alarm in my truck went off. So I got
19 arrested. There was some plastic with residue
20 there. I got charged with that. That was a
21 possession case.

22 But it wasn't the first time I was out.
23 It was way later.

24 Q. Taking you to the 2011-2012 timeframe, did
25 you begin dealing drugs then?

1 A. Yeah. At that point I lost a lot of the
2 desire for drugs; not completely, but I was really,
3 really trying to turn my life around. My mentality
4 was still such that maybe I could survive by selling
5 dope and not using dope, and it wasn't really
6 committing a crime like I would have done before,
7 like residential burglaries, you know what I mean,
8 really stupid things.

9 Q. So was that your mindset at the time, If
10 I'm dealing drugs, I'm not really hurting anybody,
11 so this is something else I can do to make money?

12 A. Yeah, and I was just trying to just stay
13 home and take care of my family. My daughter was
14 born, and that was pretty much the most important
15 thing in my life. I realized that drug-dealing, you
16 know what I mean, ain't the way to go, and I
17 understand that. But at the time, I didn't really
18 think like that. I seen these other guys that were
19 out there all their life selling dope and never
20 going to prison. And to me, that was going straight
21 at that time.

22 Q. With your drug habit before that time,
23 could you really even be a successful drug dealer,
24 because you were using dope all the time?

25 A. Now, I always joke around, and it's the

1 truth; we chase the customers away. Get out of
2 here, I mean.

3 Q. And before that time, what types of
4 controlled substances had you used or have you used?

5 A. I started doing cocaine and heroin when I
6 was about 12 or 13 years old, shooting it up. And
7 from then on I went to crack. I didn't really like
8 heroin until I got to prison. I started using
9 heroin mostly in prison because there was no other
10 drugs coming in but heroin. I acquired a taste for
11 the heroin in prison and that became my drug of
12 choice after that.

13 Q. What about methamphetamine?

14 A. I've done it. It's not my drug.

15 Q. How about Suboxone?

16 A. I used Suboxone to get off heroin the
17 first time. It actually helped me out a lot. If
18 you use it correctly, it doesn't get you high. It
19 blocks the opiate and gives you a chance to be
20 straight and not using, and you can't use. And I
21 tried. I did Suboxone. I would use the Suboxone
22 under my tongue -- it's an opiate blocker -- then go
23 buy heroin later that day. And heroin doesn't
24 affect you. It has a opiate blocker in it. So I
25 would waste two or three hundred dollars trying to

1 get high. And eventually -- it's actually what
2 helped me start selling dope, because I knew I could
3 have it and not use it.

4 Q. What about LSD? Did you try LSD, also
5 known as acid, before?

6 A. Yes.

7 Q. What about mushrooms?

8 A. Yes.

9 Q. And for the members of the jury who don't
10 know, what's the difference between cocaine and
11 crack cocaine?

12 A. Cocaine is powder. People snort it or
13 shoot it. Crack is cooked with baking soda. I've
14 heard you can cook it with ammonia. I'm not sure.
15 People also shoot it up. They can break it back
16 down with lemon juice, which is pure form, I think,
17 maybe. Mostly smoked.

18 Q. And at some point, now that you're dealing
19 drugs, do you start getting drugs from someone named
20 Chris Garcia?

21 A. I always got drugs from Chris Garcia since
22 2001, since I got out. But I never sold drugs from
23 him. I would ride around with him, help him
24 deliver, stuff like that, for my dope, for what I
25 was getting high off of. I would be a runner,

1 pistolero, that kind of thing.

2 Q. What's a pistolero?

3 A. A guy that sits there with the gun, makes
4 sure he doesn't get robbed or -- the guy with the
5 gun.

6 Q. About how many times do you think you
7 bought from Chris Garcia over the years?

8 A. Hundreds, thousands of times, probably.
9 And he mostly gave it to me.

10 Q. What types of drugs would you buy from
11 him?

12 A. Before 2012, around that time, all he sold
13 was crack. He used heroin, sold crack. So that's
14 what I would get from him, crack or powder cocaine.

15 Q. Was Chris Garcia an SNM Gang member?

16 A. Yes.

17 Q. And when you get out of prison, around
18 that timeframe, what's your relationship with the
19 SNM Gang?

20 A. It was pretty good all the way until I
21 left Kathy. I don't know how it happened, but
22 somehow she ended up with somebody that used to be
23 one of my best friends, Arturo Garcia. And there's
24 a rule against being with other members' wives and
25 girlfriends. I sent him messages I don't know how

1 many times that, "I'm not tripping; go ahead. You
2 kind of did me a favor," and...

3 Q. When you say "Kathy," is Kathy the one who
4 used to set you up with drugs, then get you
5 arrested?

6 A. Yeah, so she went from me to another
7 pinto, another inmate.

8 Q. What was his name?

9 A. Arturo Garcia.

10 Q. Was he an SNM Gang member?

11 A. Yeah.

12 Q. Even though there is a rule, now, as far
13 as you knew, was she messing around with him when
14 she was with you, or did she get with him after your
15 relationship ended?

16 A. I really don't think she was -- she's not
17 the type to be messing around on her man. She
18 doesn't -- she just is really insecure. Her whole
19 world is to keep him focused on her.

20 Q. At this point, did you really care if she
21 was with Arturo Garcia?

22 A. At this point, I thought it was a good
23 thing, actually. I thought, that's my brother; he's
24 getting something out of it. She's not calling the
25 cops on me; she's not trying to fight with me.

1 She's taking him dope and helping out the brothers,
2 is what I thought. You know, I had been through a
3 lot with her and I loved her. At one point I loved
4 her to death. But after I figured out what had been
5 going on -- and she even tried to make me fight with
6 my real brother, Richard, the one who started the
7 shop. She would try to keep him away. She told me,
8 "He called me a bitch."

9 I said, "Richard didn't call you a bitch."

10 And she said, "Well, who are you going to
11 believe? Me or him? Who took you your dope?"

12 I said, "Come on, Kathy." It just got
13 real bad.

14 Q. When did you find out that Arturo Garcia
15 was with her? Were you back in prison, or were you
16 on the streets?

17 A. I was in jail, actually getting ready to
18 go to court, go to trial on the domestic cases that
19 she had put me in jail for. And she came to visit
20 me. She brought me Arturo's dope, asked me why I
21 was doing this.

22 And I called my lawyer, and I said, "Hey,
23 this girl is coming to visit me." And I didn't tell
24 him she was bringing me dope.

25 He said, "That's good. Let her." You

1 know what I mean? So I let her.

2 And she started asking me, "How do I clean
3 this up?"

4 And I made sure I was on the phone when I
5 did it, and I told her, "You were there. You know
6 what happened. I can't tell you what to say. Say
7 the truth and that's it."

8 And she said, "Well, they'll arrest me if
9 I do."

10 I said, "Go to my lawyer's office and talk
11 to him."

12 So she went in there and she took him a
13 letter, and she spelled it all out why she did it.
14 She said she was jealous because I was with a
15 younger woman and I left her.

16 Q. Over the years -- how many years do you
17 think you've spent in prison overall?

18 A. Probably about 20, somewhere around there.

19 Q. About 20 years?

20 A. Give or take a few.

21 Q. How old are you now?

22 A. 47.

23 Q. When was the last time you were released
24 from prison? Not from jail, but from prison?

25 A. 2012, I believe.

1 Q. So what are you doing when you get out of
2 prison at that point?

3 A. I'm trying to get a ride for my wife and
4 my daughter. Everybody I ran into told me, "Arturo
5 is trying to put a hit on you."

6 When I talked to Arturo, Arturo would say,
7 "No, it's all good, brother."

8 And people would be right there, so he
9 just told me right there, "No, I didn't say that."

10 And I started seeing all these other guys
11 that were known informants, rapists, all this stuff
12 that's supposed to be against the rules, they're all
13 on these boards and they're the ones that are
14 shot-callers. And every time I come back, I got to
15 go to the lockup unit because somebody dropped a
16 kite on me because Arturo had a hit on me that he
17 won't admit to.

18 So I just got real tired of it. I wanted
19 to live a different life. I started feeling guilty
20 about the things I did. Once I got off the dope, I
21 no longer had the motivation to be part of this
22 gang. My life is my daughter. So that's what I was
23 doing. I was trying to do that.

24 Q. So seeing that some of the rules had
25 changed over time and they weren't being enforced,

1 did this change your mindset about the gang?

2 A. Yes. I was real disillusioned. I was a
3 true believer. I was dedicated to it. When I was a
4 kid, I thought this was something -- I thought this
5 was what it was about.

6 Q. So at that point do you try to create
7 distance between yourself and the gang?

8 A. For the most part. There were a few other
9 guys I talked to that were on the same page as me,
10 that were not necessarily -- this gang turned into
11 something like real evil. Some of the guys in there
12 are not evil people; some of the guys in it have
13 done bad things, but they're not sitting in their
14 cell trying to think of ways to hurt people or try
15 to use everybody that comes in contact with them.
16 And that's what it turned into it. That's all I got
17 from them.

18 So the people that I would associate with
19 were mostly people that were trying to move on, or
20 trying to do something better. Some of them are
21 still struggling with drugs, myself included, but
22 we -- I didn't believe in that anymore.

23 Q. Let me move forward in time to the fall of
24 2015. Were you still selling drugs at that time?

25 A. Yes.

1 Q. I want to ask you if you and someone named
2 Salamon Ramirez went to Chris Garcia's house in the
3 fall of 2015.

4 A. We went to his house a few times.

5 Q. I'm going to focus your attention on the
6 date when you picked up a gun. So tell us why you
7 went to Chris Garcia's house on that occasion.

8 A. I went to pick up a gun, because another
9 one of my brothers had been coming by because I was
10 selling dope, and I'd been giving him dope all the
11 time. And one day he started acting like I had to
12 give it to him, or I owed it to him. And I didn't
13 mind helping him out, but I didn't like that
14 attitude. So I told him, "Hey, don't come back
15 without money. You hear me?"

16 I wanted him out of there. I knew he
17 wasn't going to get no money. So he called one
18 morning and he asked if he could come over. I told
19 him no. And he said, "Well, I have some money."

20 So I let him come over. And I go out
21 there, and he starts telling me this and that
22 about -- he starts trying to talk me out of some
23 dope, that he had no money. I told him, "You got to
24 get out of here, Dreamer. Don't come here. Don't
25 come here."

1 So Lorenzo Torrez, Dreamer -- or Lorenzo
2 Valdez, Dreamer.

3 Q. What's his name?

4 A. Lorenzo Valdez, Dreamer.

5 So I look on the seat of the car. He has
6 a gun. And he picks up the gun. And I told him,
7 "Ah, whatever."

8 I turned my back and I started walking
9 inside at this point. I didn't have a weapon at the
10 house. You know what I mean? I was just selling
11 dope.

12 Q. What were you selling?

13 A. Heroin. So he shot twice in the air. So
14 I called Chris; I told him I needed a gun.

15 Q. And you called Lorenzo Valdez a brother.
16 Was he SNM?

17 A. Yes.

18 Q. What about Salamon Ramirez?

19 A. Salamon was also SNM. But he's a drug
20 addict through and through. He'll probably always
21 be a drug addict. But he's not a bad person,
22 really.

23 Q. So do you and Salamon go to Chris Garcia's
24 house to get a gun?

25 A. Yeah. Salamon was staying at my house at

1 that time, and I would try to help keep him off the
2 streets by letting him stay there. I would give him
3 dope, and I would have him drive for me, and just do
4 stuff like that.

5 Q. Why did you feel you needed to get a gun
6 at that point?

7 A. I felt threatened by Lorenzo, by Dreamer.
8 You know what I mean? He's going to come back,
9 shooting at my house. You know what I mean? My
10 family is there. And at this point that's what I'm
11 doing. I'm really getting away from selling dope,
12 trying to, trying to find a job, or trying to find
13 some other way out. Previously, I said that I had
14 gone to the methadone after I was arrested, but I
15 believe I was already on the methadone, and still
16 using, but still trying to get off.

17 Q. What is methadone used for?

18 A. Drug addiction; treat drug addiction, a
19 substitute for heroin.

20 Q. At that point, isn't it true you were a
21 convicted felon?

22 A. Yeah.

23 Q. So were you supposed to be even possessing
24 a firearm at all?

25 A. No, I wasn't supposed to be possessing

1 firearms or heroin or any of the stuff I was doing.

2 Q. Okay. So what happens when you get to
3 Christopher Garcia's house? Is he able to provide
4 you with anything?

5 A. Yeah, he gave me the gun. He gave me -- I
6 believe it was a revolver. I was using a lot of
7 drugs. My memory is kind of cloudy. But I did pick
8 up a gun from him. Salamon was with me in the car.

9 Q. Did you pick up any drugs, as well?

10 A. Yeah.

11 Q. What you get from him?

12 A. I think it was about a quarter ounce, 7
13 grams.

14 Q. A quarter ounce of what?

15 A. Heroin.

16 Q. Was that heroin to use or to sell, or
17 both?

18 A. It was both.

19 Q. So what happens when you leave the house?

20 A. We're driving back, and we get pulled
21 over. I give the dope and the gun to Salamon.
22 Salamon asked me to take off. You know what I mean?
23 That was what I was keeping him high for, you know
24 what I mean, so he can help me get away from stuff;
25 for him to get out and run and ditch it.

1 There was only one cop. He was going to
2 stop one of us. I guess Salamon ran into somebody's
3 back yard. A dog barked at him. He thought it was
4 a police dog. And he laid on the floor, waiting for
5 the police.

6 Q. He goes to someone's back yard and he
7 thinks it's a police dog?

8 A. Yeah.

9 Q. And he just lays down?

10 A. He lays down and waits for the police to
11 show up.

12 Q. Did the police get him?

13 A. Yeah.

14 Q. Were you arrested on that occasion?

15 A. No. Surprisingly, I guess he must have
16 gotten rid of everything, or I don't know if he got
17 caught with it. I don't know if that's when he
18 started working with law enforcement, or what. But
19 he did go to jail. They asked me who it was. I
20 think I told them, "I don't know who that was. I
21 was giving him a ride," or something.

22 Q. Did you lie to the police about that?

23 A. Yeah.

24 Q. And at some point you mentioned working
25 with law enforcement. Was it your belief that he

1 later began working for law enforcement?

2 A. My belief.

3 Q. Now, I want to take you to September 11 of
4 2015, and ask you if you sold drugs to anybody on
5 that date.

6 A. I believe you're referring to Robert
7 Madrid?

8 Q. Yes.

9 A. Yeah, he came to my -- well, I seen him
10 someplace. He asked me for the number. I gave him
11 the number. And he came and bought. I think that
12 was a quarter ounce also, or a teener, 1/16.

13 Q. Okay. You said a teener. What is a
14 teener?

15 A. A 1/16 of an ounce. I sold him some dope.
16 Later on that day or the next day, he called me back
17 and said that he sold a car and he wanted to start
18 selling dope, and he wanted an ounce and a gun -- or
19 I think it was an ounce. So he came to the house,
20 and I knew he was no good. I knew he was a rat. He
21 was an informant. So I cut the crap out of the
22 dope.

23 Q. What does that mean?

24 A. I put a bunch of sugar in it and just a
25 little bit of dope, and I gave him the wrong bag.

1 So when he left -- I noticed after he left, so I
2 called him, "Hey, come back." He didn't want to
3 come back.

4 Q. You gave him the good stuff and not the
5 bad stuff?

6 A. Yeah.

7 Q. When you cut it, was that to harm him or
8 just to dilute the amount of heroin?

9 A. Just to dilute the heroin, just to get his
10 money. You know what I mean? I didn't think too
11 highly of Robert. I knew I shouldn't have sold to
12 him. I even told him, "If you're working off
13 charges, go work them off somewhere else."

14 And he said, "Oh, not me."

15 Q. So you suspected he was working with law
16 enforcement?

17 A. I kind of knew. But I was just --

18 Q. All right. So you gave him the good
19 drugs. And what is your response to doing that?

20 A. I tried to get him to come back, and he
21 wouldn't come back. So I told him, "I know where
22 you live, Robert."

23 And he hung up. Somebody called me back
24 and said, "Don't be threatening us." Some girl.

25 "I'm not threatening nobody. I just want

1 to talk to him. Tell him to come back here or I'll
2 go over there."

3 At that point, Agent Acee and Mark Myers
4 and Nate Lerner and a bunch of sheriffs pulled up at
5 my house.

6 I think he called me back and said, "All
7 right. I'll go back. And meet me at your house."

8 And I went back to my house, and they
9 pulled in and arrested me.

10 Q. All right. So when someone calls you
11 about a threat, shortly after that law enforcement
12 arrives at your house?

13 A. Yeah.

14 Q. Who is that in your car with you?

15 A. Me and my wife.

16 Q. When law enforcement got there, including
17 Agent Acee, did anyone give you any commands?

18 A. Yeah. They told me to get out of the car,
19 lock the doors. And I sat there and talked to my
20 wife for a while. They broke out the back window.
21 I think I almost got shot that day for not exiting
22 the vehicle. But I knew what happened. Pretty much
23 instantly, I knew Robert set me up. I knew. That's
24 why he didn't want to come back. I knew.

25 Q. You kind of started figuring things out at

1 that point?

2 A. Yeah, I kind of knew before that, but at
3 that point I knew for sure.

4 Q. All right. And as a result of not
5 complying with Agent Acee's commands, did you get
6 basically yanked out of that car?

7 A. Yeah, I got drug out. They broke out the
8 back window, like I said, and unlocked the doors and
9 drug me out.

10 Q. So what decision did you make that day
11 after you got arrested?

12 A. I would have never had the gun there if it
13 wasn't for Dreamer. I had made the decision a long
14 time ago to distance myself from that gang. At that
15 point, I made the decision that I'm going to spend
16 as little time away from my daughter as possible.
17 I'm going to -- I'd already pretty much really made
18 the decision to stop using drugs. They didn't hold
19 me the same way they did before. I felt I can leave
20 that behind also. And I was planning on doing it.
21 This just hurried that process along. I knew I was
22 going to do whatever it took not to be away from my
23 family again.

24 Q. So when you say it hurried along that
25 process, do you decide to cooperate with the FBI?

1 A. Yes.

2 Q. Were you taken to jail as a result of this
3 arrest?

4 A. Yes.

5 Q. And what were you booked on?

6 A. Felon in possession of a firearm and
7 trafficking heroin, I believe.

8 Q. Now, were you initially booked on those
9 charges, or were you booked on a probation or parole
10 violation?

11 A. I think it was a probation/parole
12 violation. I don't think I was charged with the
13 felon in possession stuff till later, but that's
14 pretty much why they were there.

15 Q. Okay. And then when you're in jail, are
16 you then caught the next day with a syringe with
17 some liquid in it?

18 A. Yeah.

19 Q. Did you take that in with you, or did you
20 get it when you got to the facility?

21 A. I got it when I got to the facility.

22 Q. How did that happen?

23 A. I don't remember who it was. Somebody
24 seen that I was sick, and they were trying to help
25 me out, put a syringe under my door.

1 Q. When you said you're sick, are you sick
2 from an illness or is that from your drug use?

3 A. This is why I think I was on the methadone
4 before that. I was sick from the methadone and from
5 heroin.

6 Q. So even when you come off methadone, do
7 you still feel the effects of even coming off that
8 medication?

9 A. Yeah, it's worse than heroin. Coming off
10 of methadone is worse than coming off heroin.

11 Q. All right. As a result of being in jail,
12 are you at some point released from jail to begin
13 cooperating with the FBI?

14 A. Yeah.

15 Q. And what do you agree to do for them?

16 A. I agree to take some phone calls from
17 these guys in prison, my brothers. I agree to make
18 a couple controlled buys, and I agree to debrief and
19 answer questions honestly, and admit to everything I
20 did going way back.

21 Q. When you say "controlled buys," tell the
22 members of the jury about that process. What's your
23 involvement in a controlled buy?

24 A. Meet with the officers or agents, whoever
25 they are. They give me the money, tell me what they

1 want me to try to buy, give me a recording device,
2 and send me off to go make the buy. They follow me.
3 They search me prior, they search me after.

4 Q. And do they search you to make sure you
5 don't have any drugs or other contraband with you?

6 A. Yeah.

7 Q. And did you engage in one of these
8 controlled buys on November 18, 2015, from Chris
9 Garcia?

10 A. I made a couple, more than one.

11 Q. And was law enforcement with you on those
12 occasions?

13 A. Yeah, every time. Every time they search
14 me before, search me after.

15 Q. Now, when this process begins, are you
16 then provided an attorney as part of this process?

17 A. Yeah.

18 Q. And when you had that attorney then, did
19 you sit down for what's called a debrief or an
20 interview under what's called a Kastigar letter?

21 A. Yes, I did.

22 Q. Would you tell the members of the jury
23 that once you had the protection of a Kastigar
24 letter, what you told the Government about a
25 homicide that you were involved with?

1 A. Yes.

2 Q. Who did that homicide involve?

3 A. It involved myself, Anton Cordova, Chris
4 Garcia, and the victim was Shane Dix.

5 Q. And did you eventually participate in this
6 homicide of Shane Dix?

7 A. Eventually, yeah.

8 Q. And where was Chris Garcia when it
9 actually happened?

10 A. I believe he was in Las Vegas, Nevada,
11 watching a Super Bowl -- I don't think the Super
12 Bowl was there. I think he was at a casino watching
13 the Super Bowl in Las Vegas.

14 Q. Do you know why it was important that he
15 be in Las Vegas while you were in Albuquerque?

16 A. So he wouldn't be blamed for it.

17 Q. And what was Chris Garcia's relationship
18 with Shane Dix?

19 A. From what I understand, the guy that was
20 his former pistolero, his former gunman, was a guy
21 named Dragon from San Jo, a gang in Albuquerque.
22 They were arguing; Dragon and Shane Dix were arguing
23 over a girl. And Chris was telling Dragon, "Just
24 get him out of here. Tell him to leave," or
25 whatever.

1 Chris had a lot of dope and money on him,
2 and they were still arguing. Chris went up to the
3 car and told Shane, "Just get the fuck out of here."
4 He was the passenger -- excuse my language.

5 Shane argued back with him. Chris reached
6 in and backhanded him. And Shane shot him through
7 the door, is what I understand. Dragon was supposed
8 to get the dope and the money off Chris, and he
9 didn't do that. He left. So Dragon was fired,
10 obviously.

11 Q. For not protecting --

12 A. For not protecting him, for not helping
13 him, for not doing anything he was supposed to do.

14 Q. Did you eventually see a wound in Chris
15 Garcia's stomach from getting shot?

16 A. At that point, I was still with my
17 ex-wife, Kathy. She worked at the hospital. So I
18 knew everything that was happening with him, that he
19 was intubated and he barely made it, he barely
20 lived. Yeah. And he was shot in the -- I want to
21 say left hip. I think it was the left hip.

22 Q. You just know he was shot?

23 A. In the lower part of his body. I know it
24 affected his leg circulation. He had to wear a pair
25 of panty hose.

1 Q. And how far apart was the time when Shane
2 Dix shot Chris Garcia, and when you participated in
3 this homicide with Anthony Cordova?

4 A. I think it was a couple of years. At that
5 time, I was on drugs really bad, and all this stuff
6 runs together. And I was in and out of prison on
7 parole violations; and the stuff with Kathy. Chris
8 even bonded me out on the cases with Kathy at that
9 time. She would get me arrested for domestic
10 violence, and I would go to jail, and Chris would
11 bond me out.

12 Q. Who was Chris Garcia, in terms of the SNM?
13 Was he a well-known drug dealer for the gang?

14 A. He was a drug dealer, and he was known to
15 have a lot of money. People were using him pretty
16 much. At one point me and Jake Armijo were just
17 going to take his dope and rob him and kill him, or
18 whatever, you know. We never did it, me and Jake.
19 Jake is not --

20 Q. Let me ask you this: That's Jake Armijo;
21 is that correct?

22 A. Yes.

23 Q. Also known as Big Jake?

24 A. Big Jake.

25 Q. Was Chris Garcia known for basically

1 giving people a start-up kit when they got out of
2 prison?

3 A. Yeah, baby baller startup kit. He'd give
4 everybody --

5 Q. Did you say "baby baller kit"?

6 A. Baby baller startup kit. And he'd give
7 everybody an ounce of dope, 500 bucks cash -- not
8 all the time, not that amount. He'd give them
9 something, give everybody something. And it pretty
10 much served two purposes. He would say, "If they do
11 good, and they start selling, making money, that's
12 good. They bring back some money. If they don't,
13 then I don't ever have to deal with them again. It
14 was cheap to get rid of them."

15 Q. When you bought from Chris Garcia, did you
16 know that you could buy from him for law enforcement
17 because you had done so in the past?

18 A. Yeah. Yeah, there's no question that he
19 would sell dope to me.

20 Q. When you got released from jail from the
21 more recent arrest, who was supervising you?

22 A. Agent Bryan Acee.

23 Q. And in addition to Agent Acee, were you
24 supposed to report to anybody else?

25 A. I reported once to the probation office, I

1 think, but mostly it was Agent Acee was in charge.

2 Q. What was the purpose of reporting to the
3 probation office?

4 A. I think it was part of the process after I
5 got -- after I took the plea bargain. I think it
6 was part of the process that I was supposed to go
7 and meet him.

8 Q. Did you have to submit to urinalysis
9 following your release?

10 A. I did for my work. Every time I changed
11 jobs, every time random urines at work. I don't
12 think I did -- I think I did one before I left. I
13 was in an accident in my work truck; also had to
14 give a drug sample then.

15 Q. Let me ask you this. I'm going to get to
16 these recordings in a little bit. So when you're
17 released, is it true that you still have a drug
18 problem?

19 A. When I'm released, yeah.

20 Q. And what do you do in response to that
21 problem?

22 A. At that point it was a wake-up call. I
23 knew that everything hinged on that. I knew that I
24 could not turn back. That was part of the reason
25 why I agreed to cooperate, is to burn this bridge;

1 because I tried to get away from this a lot of times
2 and it was too easy to go back. Everybody I knew in
3 Albuquerque -- I grew up there. Everybody was a
4 gang member. So I had to stay off dope. And I
5 think I was on the methadone before, but I think
6 after the arrest, I may have used once or twice, but
7 I was never caught, and I never -- it wasn't a
8 continued thing, and I was able to stop totally for
9 a long time.

10 Q. And following that, did you begin using
11 methadone?

12 A. Yeah. That was a big thing that helped
13 me.

14 Q. Did you do that on your own, or did
15 somebody require it?

16 A. It wasn't required. It was on my own. I
17 am pretty proud of the fact that I detoxed that
18 stuff on my own also on the streets.

19 Q. And once you were released, how long was
20 it before you were arrested again?

21 A. Two years, probably. Well, I got arrested
22 for a traffic ticket, failure to pay the fine or
23 something. Yeah, it was two years. It was right
24 before.

25 Q. And then, more recently, can you tell the

1 members of the jury whether you were arrested in
2 relation to a stolen vehicle?

3 A. Yeah, I was arrested for auto theft also.
4 That was the last arrest.

5 Q. I won't ask you about the circumstances of
6 that, because it's a pending charge. But you did
7 get an arrest; is that correct?

8 A. Yes, I did.

9 Q. And so you were out about two years?

10 A. Yeah.

11 Q. What were you doing there during that
12 time? Were you working?

13 A. I was living my life, man. I was working,
14 doing stuff that I never thought I was capable.

15 Q. And I want to talk to you about any
16 benefits you received as a result of your
17 cooperation real quick.

18 A. The number 1 benefit was burning this
19 bridge. I also received vocational training.

20 Q. Who paid for the vocational training?

21 A. The Government.

22 Q. All right. And are you aware that the
23 Government paid approximately almost \$3,000 to send
24 you to a trade school?

25 A. Yes.

1 Q. And did the Government also help you with
2 vehicle and maintenance repairs?

3 A. Yes.

4 Q. At some point, did the Government help you
5 to help fix up an RV so you could leave town after
6 this investigation concluded?

7 A. Yes.

8 Q. And are you aware that you received
9 payments of almost \$5,200?

10 A. Yeah.

11 Q. For a total of almost \$10,500 worth of
12 benefits from the Government?

13 A. Sounds right.

14 Q. Now, when you got a trade and you were
15 working on your own, were you still receiving
16 payments from the Government, from the FBI?

17 A. Not payments. Probably about six months
18 after I was out. And the state I was living in, I
19 had no family. I had never done that before. My
20 vehicle broke down. I didn't really have a savings.
21 I didn't really know how to do that kind of stuff.
22 And I asked Bryan Acee for help, and he helped me.
23 He --

24 Q. How did he help you?

25 A. He paid for the parts at Auto Zone, I

1 believe it was, in Albuquerque, and I picked them up
2 in the state that I lived in, and I did the repairs
3 myself.

4 THE COURT: Mr. Castellano, would this be
5 a good time for us to take our morning break?

6 MR. CASTELLANO: Yes, sir.

7 THE COURT: All right.

8 Mr. Mendenhall, if you'll help with the
9 door there. We'll be in recess for about 15
10 minutes.

11 (The jury left the courtroom.)

12 THE COURT: I handwrote a little ruling on
13 334, pages 17 through 21. I'm going to keep those
14 out on relevancy grounds.

15 And then on 395, pages 19 through 21, it
16 seems to me that -- I just can't see a hearsay
17 exception here. I don't see also how they're
18 relevant except for their -- except for their truth.
19 So Christopher Garcia isn't on trial, and so there
20 is no -- 801(d)(2)(A) doesn't apply. Molina is
21 already dead by the time of these comments. And C.
22 Garcia wasn't a Molina conspirator. So Rule
23 801(d)(2)(E) doesn't apply, at least as to the
24 Molina conspiracy. And the statements weren't in
25 furtherance of the conspiracies that Mr. Garcia

1 belonged to; not Marcantel and Santistevan.

2 So I can't discern an applicable Rule 803
3 or Rule 804 exception either. So I'm going to
4 require those portions to be taken out, too. So
5 that takes care of those two, and I'm basically
6 sustaining the objection. So you'll have this oral
7 one on 395, and Ms. Standridge just gave you a
8 little bit of written one I did on 334.

9 All right. We'll be in recess for about
10 15 minutes.

11 (The Court stood in recess.)

12 THE COURT: All right. We'll go on the
13 record. I mostly got through the Government's brief
14 regarding invocation of the Fifth Amendment
15 privilege as to Mr. Montoya and Mr. Duran.

16 Let me tell you what I'm thinking on that.
17 I agree with the Government. I think that these
18 issues would be collateral that Mr. Montoya and
19 Mr. Duran would take the Fifth on, so I do think
20 that they will be permitted to testify as they are.
21 So I think they're collateral. I'm not inclined to
22 tell the defendants what you can't question and not
23 do.

24 Here's what I would propose to do: I
25 think you're entitled to nibble around the edges.

1 Mr. Candelaria, if you decide on cross-examination
2 you want to come up here and be closer to Mr.
3 Montoya, you're welcome to do it, to help him walk
4 through those questions. So I'll leave that to you.
5 But you're invited to come up. We'll give you a
6 chair up here, if you decide you want to do that.

7 I don't see any really huge downside if he
8 has to invoke in front of the jury. What I'd ask
9 the defendants -- I'm letting you nibble around the
10 edges to do what you've got to do there. Just don't
11 try to turn it into a circus. I mean, if he has to
12 take the Fifth a few times, two or three times or
13 something, to get through your cross, I can live
14 with that. Fifty times, I may have to figure out
15 something alternative. So try to help me get
16 through and get Mr. Montoya through there.

17 On Duran's -- the child abuse issue, do
18 you have any issue? Are you letting that go? What
19 do you have on that? I think it's really a question
20 of whether you've got a good faith basis to ask any
21 questions on it. And of course, I don't have
22 anything that shows that there is any evidence of
23 it.

24 MS. DUNCAN: I do, Your Honor, have a good
25 faith basis to ask him about it. First, while he

1 was in custody, he had repeated phone calls with his
2 wife, encouraging his wife to hit his daughter, to
3 discipline her for various issues. And he said
4 either "Beat her ass," a bunch of different ways,
5 and we have those phone calls.

6 In terms of the Oregon case, it's not true
7 that the detective found there was no probable
8 cause. He found there was no probable cause to
9 believe that the abuse had happened at a rest area
10 that was within the Washington police jurisdiction.
11 So he referred it to Portland. But he very much
12 thought that Eric Duran had slapped his daughter.
13 He talked to teachers who witnessed what they saw
14 was a bruise on Ivy's face --

15 THE COURT: Well, I think you've laid
16 enough good faith basis. So I'd not be inclined to
17 grant any sort of limiting order that doesn't allow
18 the defendants to go into this issue.

19 MS. DUNCAN: Thank you.

20 THE COURT: All rise.

21 (The jury entered the courtroom.)

22 THE COURT: All right. Mr. Montoya, I'll
23 remind you that you're still under oath.

24 THE WITNESS: Yes, sir.

25 THE COURT: Mr. Castellano, if you wish to

1 continue your direct examination of Mr. Montoya, you
2 may do so at this time.

3 MR. CASTELLANO: Yes, sir. Thank you.

4 THE COURT: Mr. Castellano.

5 BY MR. CASTELLANO:

6 Q. Okay, Mr. Montoya, going back to your
7 conditions of release, so after you finished
8 cooperating in this case, did you then leave the
9 state of New Mexico?

10 A. Yes, I did.

11 Q. And did you stay out of custody for about
12 two years following that?

13 A. Yes, I did.

14 Q. And were you arrested for violating your
15 conditions of release for picking up a new charge,
16 as well as for not keeping in touch with Agent Acee?

17 A. Yes.

18 Q. And is that the reason you're in jail
19 right now?

20 A. Yeah.

21 Q. Now, do you recall that Shane Dix shot
22 Chris Garcia in about 2004 and then Shane Dix was
23 killed in 2005?

24 A. It could have been that timeframe, yeah.

25 Q. And after that homicide, was anybody

1 arrested? Let me ask you this.

2 A. I believe somebody was questioned and held
3 for a few days.

4 Q. Until you came forward with the
5 information about the homicide, had anybody been
6 charged with it?

7 A. No.

8 Q. And as a result of your cooperation, were
9 Chris Garcia and Anthony Cordova charged with that
10 murder?

11 A. I believe so. I believe Chris pled
12 guilty. I don't know for sure.

13 Q. And is Anthony Cordova still pending
14 trial?

15 A. I believe so.

16 Q. I want to take you back now to the part
17 where you told us that you were working with law
18 enforcement. And earlier you testified that you
19 made controlled buys and that you were recorded. Do
20 you recall that?

21 A. Yes.

22 Q. How were you being recorded?

23 A. Last time you had stopped me from saying
24 it? Do you want me to describe the recording
25 device?

1 Q. No, what I'm asking is: Were you carrying
2 a recording device?

3 A. Yes, I was.

4 Q. And in preparation for trial, have you had
5 an opportunity to listen to the recordings and to
6 review the transcripts of those recordings?

7 A. Yeah, both.

8 Q. And can you tell the members of the jury
9 whether the recordings that we're going to play here
10 in court are recordings you've listened to
11 beforehand and whether they accurately capture the
12 conversation as you remember them when they
13 happened?

14 A. All of the recordings accurately captured
15 the conversations. The transcripts are pretty
16 accurate. Sometimes it's inaudible, but on the
17 recording you can usually hear it.

18 Q. So are there times, since you were there,
19 where there might be an inaudible in the transcript,
20 but you can hear what was said?

21 A. Yeah.

22 Q. And from time to time, did you notice some
23 mistakes in the transcripts and the recording
24 accurately reflects what was said?

25 A. Yeah, yeah. Sometimes it would be like a

1 Spanish word, and it will say "inaudible," but you
2 can tell what the word is if --

3 Q. And in this case, did you start making the
4 recordings in the October/November timeframe of
5 2015?

6 A. Yes.

7 Q. Now, can you tell the members of the jury
8 whether in some of those recordings someone named
9 Eric Duran is captured?

10 A. Yeah.

11 Q. And someone named Anthony Baca?

12 A. Yes.

13 Q. At the time that you made those
14 recordings, when you first started speaking to Eric
15 Duran on the phone, what was your understanding of
16 where he was physically located?

17 A. He was physically located at the North
18 facility in Santa Fe. 3-A, I believe S pod.

19 Q. And when you say "3-A," is that a housing
20 unit there?

21 A. Yes.

22 Q. Was it your understanding that Mr. Baca
23 was housed in the cell next to him?

24 A. Yeah.

25 Q. And was it also your understanding that

1 Eric Duran had a cellphone with him in the prison?

2 A. Yeah.

3 Q. Did that necessarily surprise you that an
4 inmate had a cellphone in prison?

5 A. Not really. You can pay an officer 1,000
6 bucks to bring you a package; whatever you can fit
7 in a package, he'll bring it to you, some officers.

8 Q. And when you first started speaking with
9 Eric Duran, did you know whether or not he was
10 working or cooperating with the Government?

11 A. I didn't know at first.

12 MR. CASTELLANO: Your Honor, at this time
13 I move the admission of Government's Exhibit 356.

14 THE COURT: Any objection from the
15 defendants?

16 MS. JACKS: I think on behalf of Mr.
17 Sanchez, we made our position about this known.

18 MR. LOWRY: No objection.

19 THE COURT: All right.

20 MS. FOX-YOUNG: Only as previously noted.

21 THE COURT: All right. Government's
22 Exhibit 356 will be admitted into evidence.

23 (Government Exhibit 356 admitted.)

24 MR. CASTELLANO: With the Court's
25 permission, we'll begin playing the recording. And

1 I'll have some questions for Mr. Montoya. This is
2 approximately a 13-minute call.

3 BY MR. CASTELLANO:

4 Q. So before we begin that, what do you
5 remember about getting a call from Eric Duran?

6 A. I remember he called me, told me Pup
7 wanted to talk to me. He was in the cell next to
8 him. Pup got on the phone, pretty friendly. I
9 remember him telling me that STIU was messing with
10 the brothers, and they wanted to reach out and touch
11 one of them.

12 Q. What does that mean, to "reach out and
13 touch" someone?

14 A. They want to try to kill them.

15 Q. Let me ask you this: Did you know Mr.
16 Baca?

17 A. Yeah.

18 Q. How did you know him?

19 A. From doing time in prison. He also knew
20 my family prior, prior to me going to prison.

21 Q. About how long have you known him?

22 A. I've known him probably all my life. When
23 I was a little kid, he lived right down the street
24 from me. When he was a teenager, I was a little
25 kid.

1 Q. Do you also know him as Pup?

2 A. Yes.

3 Q. Do you know how he got his name?

4 A. He was Puppet.

5 Q. Did you know him also as Puppet at one
6 time?

7 A. I think that was his name before he went
8 to prison. I couldn't be sure, but I think.

9 Q. Do you see him in the courtroom today?

10 A. Yeah.

11 Q. Where is he sitting and what's he wearing?

12 A. Far left-hand corner, bald head, wearing a
13 suit.

14 Q. Okay. So let's go ahead. And did you
15 know Eric Duran by any other name?

16 A. Crazo.

17 Q. With that, let's begin with the recording.
18 And if you want to, on your monitor, you'll see a
19 transcript there next to you at the same time as the
20 recording?

21 (Tape played.)

22 Q. Stop right there. Okay. Santistevan are
23 making up --

24 A. Desmadre.

25 Q. What's a desmadre?

1 A. It means they're making things hard. It's
2 like making a mess of things.

3 Q. Did you know who Santistevan was at that
4 time?

5 A. Used to be the head of STIU.

6 Q. Okay. Let's continue.

7 (Tape played.)

8 Q. Stop there. When it says, "We need
9 someone on the streets to reach out and touch one of
10 them, either one," did you know who he was talking
11 about?

12 A. I think he meant somebody in a position of
13 power within STIU or the Department of Corrections.

14 Q. And what was the importance of having
15 somebody on the streets?

16 A. Somebody in prison can get to one of them
17 people.

18 Q. Let's go ahead and continue there.

19 (Tape played.)

20 Q. Let's stop it there. I let it run for a
21 little bit so we could get a few things out. You
22 asked about artillery and money. What do you mean
23 when you use the term "artillery"?

24 A. That was not me. It was Crazo telling me
25 that if I needed artillery or money, he meant

1 weapons or money to make this happen.

2 Q. And when you talk about financing this
3 project --

4 A. That was Crazo. He's talking about money
5 to make it happen.

6 Q. Let's continue.

7 (Tape played.)

8 Q. Okay. When there is discussion of needing
9 esquina, what are you talking about?

10 A. That means help with either the
11 information or the artillery. That's what we're
12 talking about. And also, it means anybody out there
13 that I could count on, because it's scattered by
14 this point. So many people are just in it for the
15 dope or trying to distance themselves, it's hard to
16 find anybody on the streets to even hear this.

17 Q. Now, when Crazo was speaking, can you hear
18 him better than Pup?

19 A. Yeah.

20 Q. Do you know why that is?

21 A. Because Pup is in the cell next to him,
22 talking through the heater vent.

23 Q. When you're on the phone, are you able to
24 identify Pup's voice? Do you recognize it?

25 A. Yes.

1 Q. Let's continue, please.

2 (Tape played.)

3 Q. So the less people who know about what the
4 better?

5 A. About a murder that we're planning.

6 Q. Why would that be important, to have fewer
7 people involved?

8 A. Less chance of somebody telling.

9 Q. And then what's your response about not
10 trusting people?

11 A. The whole reason why I started distancing
12 myself from these guys, because I would come back
13 from prison and see all the informants hanging out
14 with them, being treated like royalty; and all the
15 guys that were doing things for them being treated
16 like crap. All of us are in the hole because
17 somebody dropped a kite on us. And all the people
18 that dropped kites on us are in there with them.

19 Q. What does that mean, drop a kite on them?

20 A. Give information to STIU or something.
21 Nobody trusts anybody at that point.

22 Q. Let's continue here.

23 (Tape played.)

24 Q. So earlier he says, "Don't even tell
25 Chris"?

1 A. Yes.

2 Q. Do you know who Chris was?

3 A. Chris Garcia.

4 Q. So at this point, is Chris Garcia included
5 in the plan --

6 A. At this point --

7 Q. -- as far as you know?

8 A. I think I'm barely being included in the
9 plan at this point. I don't know what they have
10 talked to Chris about prior to this.

11 Q. And then when you say, "If you need
12 artillery," you say, "I got a couple."

13 A. I'm known to have weapons and stuff like
14 that sometimes. And at this point, I'm trying to
15 make it sound believable. And I don't know if
16 they're going to want me to -- I don't know how far
17 this plot is going to go. So I don't know if the
18 agent is going to want me to say I have a weapon, or
19 let them provide a weapon, or what. So I just said,
20 "I may have a couple. I don't know if I can still
21 get access to them. Give me a few days to find
22 out," basically to find out what the instructions
23 are, what should I do.

24 Q. Now, you talk about the P.O.s coming to
25 your pad about a month ago?

1 A. It was actually when I got raided for the
2 controlled buy with Werro. His name --

3 Q. When Agent Acee arrested you?

4 A. Yes, then.

5 Q. Okay. So did that --

6 A. Robert Madrid.

7 Q. Did that make it seem plausible, then,
8 that law enforcement had been to your house and you
9 have a reason not to --

10 A. Just in case anybody seen the cops at my
11 house. In case somebody -- "Hey, you know, Mario's
12 house got raided. He's not in jail. You know what
13 I mean? I seen a bunch of cops over there."

14 If I didn't mention something about it,
15 then I would be questioned. But if I said the P.O.s
16 came and searched my house, it would be pretty
17 believable.

18 Q. And P.O. is probation officers?

19 A. Parole officers.

20 Q. Would that be an explanation for why you
21 might not have firearms available?

22 A. That would be an explanation why I didn't
23 have nothing at my house.

24 Q. Let's play it.

25 (Tape played.)

1 Q. So when you say something, it sounds like
2 Eric Duran is repeating what you're saying. Is he
3 repeating it back to you or to someone else?

4 A. He's repeating it to Pup. Because Pup is
5 in the other cell at the heater vent. There is a
6 bunk and there is a heater under the bunk. And if
7 you get under the bunk, you can talk back and forth
8 without yelling through the whole pod to your
9 neighbors. So Crazo is under the bunk, I'm talking
10 to him, and he's relaying the message to Pup.
11 Sometimes I can hear Pup, sometimes I can't. So
12 Crazo would repeat it to me.

13 Q. Continue.

14 (Tape played.)

15 Q. A few things. What would be the purpose
16 of making a silencer?

17 A. To silence the weapon, to make it quiet,
18 nobody hear nothing, get away with it.

19 Q. And earlier you talked about the need for
20 getting addresses. What would that be about?

21 A. Locate these people that he's wanting me
22 to go touch.

23 Q. All right. And then your response is:
24 You know how to make one out of an aerosol can?

25 A. I seen it on the Discovery Channel.

1 Q. So you thought you knew how to make one
2 out of an aerosol can?

3 A. Yeah.

4 Q. Let's continue.

5 (Tape played.)

6 Q. What was that term where you guys were
7 laughing?

8 A. He's saying to make the silencer so there
9 is no calentura, heat. And I'm telling them there
10 is going to be calentura. You can't be thinking
11 that you're going to do something like that and
12 there's not going to be no heat.

13 Q. Once you hit a high-level corrections
14 officer or someone high in the administration, there
15 is definitely going to be heat?

16 A. Definitely.

17 Q. Let's continue, please.

18 (Tape played.)

19 Q. What's the belief about people living on
20 the compound?

21 A. Most of the STIU guys -- a lot of COs live
22 on compound, the trailer park right on the grounds
23 of the prison when you first come in.

24 Q. So as you enter the prison property, there
25 are actually homes, or --

1 A. Trailers.

2 Q. -- trailers where they live?

3 A. Yes.

4 Q. And is that what you're talking about
5 there, that he knows they live on the compound?

6 A. Yes.

7 Q. Okay. Let's continue, please.

8 (Tape played.)

9 Q. So there is a belief that Santistevan
10 lives on the compound, and there is another name
11 mentioned now. It's Adam --

12 A. Adam Vigil.

13 Q. Who is Adam Vigil?

14 A. He used to be a lieutenant and unit
15 manager. We called him Barney Rubble because he
16 looks like Barney Rubble.

17 Q. Who would call him Barney?

18 A. Everybody. Probably the officers would
19 call him Barney Rubble also.

20 Q. Don't get the officers in trouble.

21 A. Not to his face.

22 Q. So at least the SNM members would?

23 A. Yeah.

24 Q. Okay. Let's continue, please.

25 (Tape played.)

1 Q. What cop thing were you talking about?

2 A. I think it was an officer that got killed
3 in Albuquerque, or it could have been the Deputy
4 James McGrane thing.

5 Q. So are we talking about charities and
6 banquets and things of that nature? Who might you
7 find at those types of events?

8 A. Law enforcement and COs and corrections
9 officers.

10 Q. All right. Let's continue.

11 (Tape played.)

12 Q. Okay. So when you talk about needing a
13 couple of days, why do you tell them you might need
14 a couple days to get this stuff?

15 A. Because I'm trying to find out, should I
16 act like I have the gun? I mean, I don't really
17 know how to respond. Should I let him try to get me
18 a gun? I don't really know. I'm just trying to
19 follow instructions at that point.

20 Q. And at this point, are you sitting next to
21 law enforcement, are you talking on a phone away
22 from law enforcement?

23 A. No, I have a cellphone that was provided
24 to me by the FBI, and I'm just going about my life
25 and answering these calls.

1 Q. And did you know that the cellphone they
2 gave you was wiretapped?

3 A. Yeah.

4 Q. Did you agree to have that phone tapped so
5 that these recordings could be made?

6 A. Yeah.

7 Q. When you said you might need a couple of
8 days to get this done, what is the response about
9 someone in the prison being able to help you out
10 with that?

11 A. I don't understand. Like a couple of
12 days -- I need a couple of days to see if I could
13 get the weapons myself, and --

14 Q. And Duran --

15 A. -- we're also talking about information,
16 talking about addresses, places to go to look for
17 them, stuff like that. They're telling me, "Just
18 Google it." I guess somebody in there thinks that
19 if you type in somebody's name, that the internet is
20 going to tell you where they live.

21 Q. I'm going to show you here, next to line
22 3, it says, "Crazo: He said, yeah, if you can't get
23 the artillery, he can get it for you. And if you
24 need feria, he can get you some feria, too." So --

25 A. Pup is saying, if you need a weapon, Pup

1 can get it for you. And if you need money, he'll
2 get it for you also.

3 Q. How can Pup get you a weapon if he's in
4 prison?

5 A. Ask another member, namely Chris, is who
6 came up in that.

7 Q. And when he uses the term "feria" as in,
8 "if you need feria," what is he referring to?

9 A. If you need any money.

10 Q. Okay let's continue.

11 (Tape played.)

12 Q. Sounds like he said, "Oh, serio," where it
13 says "Spanish" on the transcript. What do you
14 understand that to mean?

15 A. "Serio" means, "Oh, serious."

16 Q. Okay. Let's continue.

17 (Tape played.)

18 Q. Asking for a --

19 A. Shot of heroin.

20 Q. What's the word in Spanish?

21 A. Cura.

22 Q. And a cura is a shot of heroin?

23 A. Yeah.

24 Q. What's going on here? It sounds like Mr.

25 Baca wants to ask how brothers are doing on the

1 streets?

2 A. He's trying to -- every time there is a
3 new board or new leader or shot-caller, somebody
4 else has the keys, they try to bring everybody back
5 into the fold that's trying to leave. Pretty much,
6 "No, carnal, it's not going to be like that no more.
7 I'm different. I'm not doing stupid things for
8 nothing. I'm going to follow the rules."

9 Q. What's the response about people talking
10 big in prison, and then they hit the streets and
11 what happens?

12 A. When everybody is in prison, they all want
13 to get high. And they all want to basically
14 survive. Also, some of them -- so we're talking a
15 good game. And as soon as they get out, they start
16 putting distance, which I was myself doing.

17 Q. And you talked about new leaders and new
18 leadership. What has happened over the years with
19 the SNM and leadership?

20 A. It was stupid, in the first place. But
21 it's gotten, like -- at least there was a semblance
22 of somebody following the rules back in the day.
23 They looked like they were following the rules. You
24 couldn't just say somebody was a snitch and then get
25 them hit. You had to have paperwork. You had to --

1 if you said somebody was a snitch and you didn't
2 have the paperwork, then you would be hit.

3 Q. We'll talk about that in a little bit, in
4 one of the other recordings. But had you ever heard
5 the term "tabla"?

6 A. Yeah.

7 Q. What's a tabla?

8 A. The board. That's what it means. It's a
9 board of directors, pretty much. When I got in,
10 when I first got in, the word was -- there was no
11 leader. "You all know what to do. We can function
12 on our own." Angel Munoz used to say, "I don't need
13 no kids, and I don't need no dads. I need
14 brothers."

15 After Angel, it was Styx. Styx had the
16 keys. So then he's the leader. So everybody
17 considered Angel a leader, but he wouldn't accept
18 the title. But he was the leader.

19 After that was Styx. "I'm the jefe, I'm
20 the leader." So he was the leader. So after Styx,
21 people didn't like the way he was doing things,
22 there was a lot of complaints. Then they started
23 with boards. I was in and out at this point. I
24 couldn't say who was on what board. I could tell
25 you some of the guys that were.

1 Q. What was Mr. Baca's role over the years?

2 A. Baca was out of state during most of this
3 time. And when he came back, then he was the
4 leader, he was the shot-caller, the llavero.

5 Q. Let's continue.

6 (Tape played.)

7 Q. What's the purpose of identifying these
8 people and then knocking them off once they get to
9 prison?

10 A. Like I said, every leader that comes in
11 comes in with these big old ideas, how we're going
12 to get it straight and get it right. Pretty much
13 talking about cutting off the deadweight, the guys
14 that ain't doing nothing for anybody. They're not
15 SNM material. And he's talking about eliminating
16 them.

17 Q. And did you ever have a chance to discuss
18 the structure of the SNM with Mr. Baca?

19 A. A little bit. Not too much. I was with
20 him for a little while, like maybe two weeks. And
21 then I got out or got locked up again for kites, or
22 whatever.

23 Q. What do you recall about those discussions
24 in the organization of the gang?

25 A. They're starting to use new terms. Like

1 instead of carnal, we were starting to use hermanos,
2 for brother; talking about breaking up the state
3 into different regions, Albuquerque being the main
4 one. And that's pretty much what I remember about
5 it. Cleaning up, cleaning the house. Everybody
6 always wanted to clean the house, and I would tell
7 them, "The house is on fire. Why are you pulling
8 weeds? Put out the fire first and then worry about
9 the yard."

10 Q. Those are your ideas at the time about
11 cleaning up the SNM?

12 A. No, that was just my thoughts. The other
13 stuff was Pup's ideas, or his and whoever told
14 him -- or wherever he got it from, he was telling me
15 about breaking up the state and stuff.

16 Q. Let's continue.

17 (Tape played.)

18 Q. Do you know what program they're
19 discussing here?

20 A. The RPP Program, I believe it was called,
21 the dropout program for people that wanted to leave
22 this gang.

23 Q. When you said, "I seen a grip," what is a
24 grip?

25 A. A lot.

1 Q. So at this point, was it your experience
2 that people were dropping out and going to the
3 program?

4 A. Yeah, and then I would see them later on
5 in the Level 4 with them. You know what I mean?

6 Q. What would that mean to you? You'd see
7 them leaving to the dropout program, and then you'd
8 see them at Level 4. What would that tell you?

9 A. That would tell me -- reinforce my idea
10 that this is a bunch of crap. This is a popularity
11 contest. This ain't nothing good coming from this.
12 The guys that are doing the most damage are
13 spreading the most deceit and causing the most
14 problems are the guys that are out there; and all of
15 us are trying to do the right thing, either for the
16 gang or for our family. Whatever right thing you're
17 trying to do, we're the ones that are paying the
18 price.

19 Q. Now, in a little bit, so I don't have to
20 stop the recording, it talks about Little Rabbit
21 locking it up, and Cyclone locking it up. What does
22 that mean?

23 A. That means they PC'd.

24 Q. What does it mean to PC?

25 A. Request protective custody.

1 Q. What types of problems did that create for
2 gang members for the SNM? Is that a good thing or a
3 bad thing?

4 A. Like if I PC'd -- well, not really
5 anymore, but before, if I PC'd, then I would be
6 greenlighted. There would be a hit on me. Not like
7 there wasn't one anyway, but at one time it was a
8 serious thing and I would have taken it serious.
9 It was not the thing to do.

10 Q. Let's continue with the recording.

11 (Tape played.)

12 Q. The transcript says there is "cheer,
13 chime." Do you know what was actually said there?

14 A. "Tier time."

15 Q. Okay. So what was your understanding of
16 the Level VI program, having steps? Could you move
17 from level to level if you had good behavior?

18 A. The way I understood it, the way it's
19 always been, Level 6 you don't any get tier time.
20 Level 5, you get rec together. Level 4, you
21 actually get tier time. But it changes over the
22 years. Sometimes different levels get different
23 privileges.

24 Q. Over here it refers to "They just brought
25 Pup back last week." Do you know where he had been?

1 A. I believe he had been out of state
2 somewhere.

3 Q. Was it your understanding, when Eric Duran
4 tells you, that Pup had just returned back in the
5 state?

6 A. Yeah.

7 Q. Let's continue.

8 (Tape played.)

9 Q. Do any what?

10 A. Vida, life.

11 Q. So the people you knew were basically
12 still in prison?

13 A. Yeah.

14 Q. Okay let's continue.

15 (Tape played.)

16 Q. What's this phrase with "amor" in it?

17 A. That means love. That used to be -- there
18 are certain words and certain things that used to
19 belong to the SNM. That was one of the words --
20 people didn't say amor, carnal. They didn't have
21 tattoos of Zias. We wouldn't allow it in the
22 prison, because that was our identifying marks. You
23 had to earn that stuff. Now it's just -- everybody
24 says it. I hear zios calling each other "carnal."

25 Q. When you ask about having money on Pup's

1 books, why do you do that?

2 A. Offering to help him out, because that's
3 what a brother was supposed to do back in the day.
4 Nobody would really do it now, but back in the day,
5 offer to send him pictures and have him talk to his
6 girl. They're in prison. You know, that's what
7 they want. They want nasty magazines and nasty
8 pictures and girls and money on their books, and
9 dope.

10 Q. At this point, are you playing the part of
11 a good brother?

12 A. Being a good brother.

13 Q. And at some point, did you actually send
14 pictures to Eric Duran on his phone?

15 A. Yeah.

16 Q. And the same question. Why would you send
17 somebody in prison pictures of a female?

18 A. Playing the part of a good brother. I
19 didn't know Eric was on this Team America, is what
20 it's been called to me. I didn't know he was on
21 board with any of this stuff. So I'm just trying to
22 keep things the way they would normally be if the
23 FBI wasn't involved, you know.

24 Q. Let's continue.

25 (Tape played.)

1 Q. That's the end of that recording there.
2 Throughout this recording, there is reference to
3 somebody named Chris. Is that always Chris Garcia?

4 A. Yeah.

5 MS. JACKS: Excuse me, Your Honor. May we
6 have a limiting instruction?

7 THE COURT: All right. These are
8 conversations that were recorded of Mr. Baca, and so
9 you can only use these conversations in your
10 deliberation of the charges against Mr. Baca and not
11 as to the other three gentlemen.

12 Mr. Castellano.

13 BY MR. CASTELLANO:

14 Q. So Mr. Montoya, after you get this phone
15 call, what are you doing with law enforcement in
16 terms of letting them know what's going on?

17 A. Giving them everything. Everything I know
18 about this stuff. That was part of the agreement,
19 was that I tell the truth.

20 Q. And so do you relay this information to
21 Agent Acee that you got this call? What are you
22 doing with the information?

23 A. I think he knows it. I think it's being
24 recorded. I really don't have to remember any of
25 it. Just pretty much be myself on the phone, what

1 they expect me to be, and that would be about it.

2 I would get a call. Sometimes I wouldn't
3 answer the phone immediately. I would get my wife
4 and my daughter someplace, send them in the
5 restaurant, or send them in the house, or whatever,
6 and I would sit in the car by myself and I would
7 take the call.

8 Q. Let me turn your attention to another
9 recording. I think this is Government's Exhibit
10 380. And it's about 25 minutes.

11 MR. CASTELLANO: Your Honor, at this time
12 I'd move the admission of Government's Exhibit 380.

13 THE COURT: Other than what we discussed,
14 anything else anybody needs to say on this?

15 MS. JACKS: Nothing additional. Thank
16 you.

17 THE COURT: All right. With that,
18 Government's Exhibit 380 will be admitted into
19 evidence.

20 (Government Exhibit 380 admitted.)

21 BY MR. CASTELLANO:

22 Q. Okay. Mr. Montoya, let's begin with this
23 recording and I'll have some more questions for you.
24 And actually before -- sorry. Before we start, the
25 first name out of the gate on the transcript is

1 Poo Poo. Who is that?

2 A. That's me.

3 Q. So do people know you also as Poo Poo in
4 addition to Mario?

5 A. Just the brothers. That was it.

6 Q. And before we start, there's going to be
7 reference to dropping home girl off. What are you
8 referring to?

9 A. I think I had a friend. The brother sent
10 the pictures with me.

11 Q. And then are those the pictures that you
12 sent to Eric Duran?

13 A. Yeah.

14 Q. All right. Let's begin the recording,
15 then.

16 (Tape played.)

17 Q. Okay. When you said, "I talked to Styx,"
18 who is Styx?

19 A. Styx is Gerald Archuleta.

20 Q. And did you have a conversation with him,
21 or were you just telling them that?

22 A. I talked to him one time. It might have
23 been the time that I talked to him. He didn't
24 really -- he was trying to not talk about it when I
25 did talk to him, so I didn't talk to him too much.

1 It could have been this time.

2 Q. You talked to him about what?

3 A. About what was going on here, see if he
4 didn't really want to participate. I don't even
5 think that this is talking about Styx. I think I
6 said "Chris," and they thought I said Styx. And it
7 went back and forth, "Did you talk to Chris, Styx,"
8 you know what I mean?

9 Q. And at some point, then, do you recall
10 having a call with Gerald Archuleta and him not
11 being too interested in this?

12 A. Yeah, I did. This could be that. But I
13 think this is when I was talking about Chris,
14 though.

15 Q. I think we clear it up down below. So
16 let's continue playing.

17 (Tape played.)

18 Q. Okay. There is reference -- when you
19 said, "Tell him about them things," what are you
20 talking about?

21 A. The weapons.

22 Q. And why not just say "weapons or guns" on
23 the phone?

24 A. That's how we talk. You know what I mean?
25 Them things, that guy, touch him.

1 Q. And so do you remember using the word
2 "murder" in these conversations?

3 A. It would probably be unlikely. I might
4 have, but I wouldn't say, "Let's go murder that
5 guy." I would say, "Let's go do that," or, "Let's
6 go take care of this," or --

7 Q. Is it kind of a basic code where you just
8 don't come out and say things directly?

9 A. Yeah, you don't say stuff like that
10 usually. If you did, people would start looking at
11 you kind of crazy.

12 Q. Down below, we'll see where you reference
13 talking to Chris. What do you remember talking to
14 Chris about?

15 A. I was supposed to not tell Chris. But I
16 wanted to make sure he knew what he was getting
17 into. I told him, "This is what they want me to
18 do."

19 He's like, "Whoa, whoa, whoa, whoa." At
20 first, he's like, "No, that's stupid. What do they
21 think?" And then later on, he was on board with it
22 fully. I don't know if they talked to him, gave him
23 a pep talk, or what. At first, he was, "Oh, yeah,
24 no."

25 Q. Just to be clear, when you first mentioned

1 it to Chris Garcia, he initially thinks it's a bad
2 idea?

3 A. Yeah. He thinks it's pretty stupid.
4 "You're going to bring a bunch of heat. Who do
5 these guys think they are? We're just going to give
6 up our lives because they had a rough ride in the
7 prison for a little while? We've been doing that
8 this whole time on their word."

9 Q. Then you said at some point it looks like
10 he's on board, but you don't know why or who talked
11 to him; is that fair to say?

12 A. Yeah. But he had a whole change of heart.
13 He was offering suggestions.

14 Q. Let's continue, then.

15 (Tape played.)

16 Q. So then when you mentioned that you -- up
17 above: "I tell him -- tell him I didn't tell him
18 nothing like that. I just told him that I might
19 need some things from him."

20 A. Weapons.

21 Q. So once again, you didn't use the term
22 "weapons"?

23 A. Yeah, I didn't.

24 Q. Let's continue.

25 (Tape played.)

1 Q. Okay. So are you clarifying now that
2 you're trying -- you're at least communicating to
3 Eric Duran and Mr. Baca that you're really not
4 telling Chris Garcia too much at that time?

5 A. It's between me and them and the FBI, I
6 guess.

7 Q. Was that actually true, or had you already
8 had a conversation with Chris?

9 A. I'd already told Chris what was going on.

10 Q. And earlier, there's -- Mr. Baca talks
11 about giving him call to try to get it as soon as
12 possible. Do you remember what that was?

13 A. Talking about the weapon.

14 Q. About the weapon?

15 A. Yeah.

16 Q. Let's continue, please.

17 (Tape played.)

18 Q. Okay. What are the tools that you need?

19 A. The weapons.

20 Q. And what are you referring to when people
21 disappear?

22 A. They usually leave a weapon with somebody.
23 Because you don't want it on you, so you get
24 somebody to hold onto it. Sometimes they'll sell
25 it. Sometimes they'll lose it. They have a

1 tendency to disappear. But sometimes, if you're in
2 this kind of lifestyle, you want to have access to a
3 few weapons, so you spread them out.

4 Q. Then is there a discussion here about
5 getting something from Chris Garcia?

6 A. Yeah.

7 Q. Let's continue, please.

8 (Tape played.)

9 Q. Okay. What's the discussion here about
10 nobody doing anything, and it's just going to be a
11 theory?

12 A. I'm telling them, you have to know that if
13 something happens to one of them guys, there's going
14 to be big consequences coming down. Something bad
15 is going to happen to us or whoever they think is
16 responsible.

17 And he's telling me, no, not as long as
18 nobody knows nothing; that it's just going to be a
19 theory; that they're not going to be able to figure
20 it out, so it's just going to go away.

21 Q. Let's continue, please.

22 (Tape played.)

23 Q. Up above you said, "Let's make it worth
24 our while." What do you mean when you say, "Let's
25 make it worth it," basically?

1 A. I'm playing along at this point. I'm
2 saying, "If you're going to do it, go big or stay
3 home. Barney Rubble doesn't make these decisions."

4 Q. Who is Barney Rubble again?

5 A. Adam Vigil.

6 Q. So did you think -- were you putting it to
7 him that someone at Adam Vigil's level isn't worth
8 killing, so you might as well go big?

9 A. Yeah.

10 Q. Okay. Let's continue.

11 (Tape played.)

12 Q. Okay. What's the complaint here by Mr.
13 Baca?

14 A. They are doing foul stuff, mostly because
15 they sent him out of state. What it's saying is
16 that they're putting jackets, rat jackets, on all
17 the brothers, but nobody heard about a rat jacket on
18 me.

19 Q. What happens when you put a rat jacket on
20 somebody?

21 A. You're greenlighted. There is a hit on
22 you.

23 Q. Is Mr. Baca blaming the administration for
24 that?

25 A. Yeah. Actually, what I'm thinking is,

1 maybe they're trying to put a jacket on him. Maybe
2 that's why he's so concerned about it now.

3 Q. Let's continue.

4 (Tape played.)

5 Q. Okay. "Either one" refers to who?

6 A. At this point it's Santistevan and Adam
7 Vigil. It gets to the point I don't even care which
8 one. Just kill one of them.

9 (Tape played.)

10 Q. Who would be the top one?

11 A. Top one would be, I believe, Gregg
12 Marcantel.

13 Q. And is that supposed to be Barney Lobo or
14 Barney Rubble?

15 A. Barney Rubble.

16 Q. Okay.

17 (Tape played.)

18 Q. One of them needs to get out of the way.
19 What does that mean, to get out of the way?

20 A. We need to kill one of them.

21 Q. And you say, "I think the higher-up one is
22 better." Who are you referring to?

23 A. Marcantel.

24 Q. And does Mr. Baca seem to have any problem
25 with that?

1 A. No. He says, "That one, too. Fuck it.
2 All of them. Whatever."

3 Q. Let's continue, please.

4 (Tape played.)

5 Q. What's your understanding about this talk
6 of a visit? "It's not a good idea to visit right
7 here."

8 A. I think it either means -- it's not a good
9 idea to do it there or to go there looking for them.

10 Q. And what's the talk about searching the
11 computer that was up above?

12 A. He thinks that if you get on Google and
13 you type in the Secretary of Corrections, it's going
14 to give you the schedule and his address and what
15 he's got planned for the day.

16 Q. Okay. Let's continue.

17 (Tape played.)

18 Q. So this is the part of the discussion
19 you're talking about finding people on the computer?

20 A. Yes.

21 Q. And do you know who Mr. Baca is referring
22 to when he says the Big Old Negrote?

23 A. The big black man? I don't know his name.
24 He's Deputy Secretary of Adult Prisons, or something
25 like that.

1 Q. And earlier -- and you may see it
2 throughout -- but Mr. Baca uses the term pedo.
3 What's a pedo?

4 A. Commotion, making a problem.

5 Q. What does it literally mean in Spanish?

6 A. It means a fart, I believe.

7 Q. But in that case it basically means a
8 problem or a commotion?

9 A. Yeah. If you say, "That guy is making a
10 pedo," he's making problems. If you say, "There's
11 all kinds of pedo outside," that means all kinds of
12 commotion outside.

13 Q. Let's continue then.

14 (Tape played).

15 Q. What are you referring to when you say
16 they have a convention once a year?

17 A. I'm just pretty much making up stuff.
18 Maybe I could find him here, you know what I mean,
19 maybe I could find him there. I think he's
20 referring to the budget, where they're getting their
21 money, their job provisions. I think that's what
22 we're talking about. Look over there where they're
23 going to have their meetings about their budget and
24 stuff.

25 Q. Let's continue.

1 (Tape played.)

2 Q. Just so we understand the players on the
3 recording here, when it says "Montoya," does that
4 refer to you?

5 A. Yeah.

6 Q. And when you see "Pup," does that refer to
7 Mr. Baca?

8 A. Yes.

9 Q. And "CHS." Is that a confidential human
10 source, who was Eric Duran?

11 A. I believe so.

12 Q. Just so we know who the players are.

13 A. Yes.

14 Q. What are you trying to do here when you
15 say, "Watch, hold on"?

16 A. I think somebody came up to my car or
17 something. I didn't want to talk in front of them,
18 so I rolled down the window. I think you can hear
19 it.

20 Q. Let's continue.

21 (Tape played.)

22 Q. Do you know who he's referring to when he
23 says, "He don't need to ask questions"?

24 A. Talking about Chris, and go pick up the
25 gun.

1 Q. So he just needs to know that and that's
2 all? Just get the gun and don't ask questions?

3 A. He needs to know that you need it. That's
4 pretty much what he's saying. You don't need to
5 know. You don't want to know.

6 Q. Let's continue.

7 (Tape played.)

8 Q. Okay. Eric Duran says, "He was waiting
9 anyways, because he was waiting to see if you told
10 him you had those or not"?

11 A. Weapons.

12 Q. Okay. And so are they waiting to hear
13 back from you before they call Chris?

14 A. Yeah. That's what all these conversations
15 are about, pretty much, is getting the weapons.

16 Q. Okay. So in other words, if you have the
17 weapons, is there any need to call Chris?

18 A. Not for them, no.

19 Q. Let's continue, please.

20 (Tape played.)

21 Q. Okay. So what is your belief about Mr.
22 Baca's knowledge of the internet and how easy it is
23 to find things?

24 MR. LOWRY: Your Honor, can I object to
25 his beliefs --

1 THE COURT: Well, lay some foundation for
2 this question.

3 MR. CASTELLANO: Sure.

4 BY MR. CASTELLANO:

5 Q. You're having a conversation with Mr. Baca
6 and he's telling you to do certain things; is that
7 correct?

8 A. Yeah.

9 Q. And some of those things include the use
10 of the internet and Google?

11 A. Yeah.

12 Q. And did some of those requests seem
13 realistic to you, from what you know about the
14 internet?

15 A. No, it's not realistic, because it's not
16 going to give me the Secretary of Corrections'
17 address or tell me his route to work or anything
18 like that. My belief is that he thinks that if I
19 enter his name, it's going to tell me everything I
20 need to know to go track him and kill him. I'm
21 telling him, "If you have Google on that phone that
22 you have right there, Google his name and tell me
23 what you find."

24 Q. So based on this conversation, what is
25 your belief about Mr. Baca's knowledge of the

1 internet and what you can find?

2 A. I think he's living in the stone age, or I
3 think he thinks everything is there, and it's not.

4 Q. Let's continue.

5 (Tape played.)

6 Q. What's your question to Mr. Duran, when
7 you say, "Hey, you can't send the phone to the
8 brother, Crazo"?

9 A. Yeah, I'm telling him if he could get the
10 phone so he could look at this stuff for himself,
11 or --

12 Q. Are you saying if Duran can get the phone
13 to Mr. Baca --

14 A. Yeah.

15 Q. -- so he can see this stuff?

16 A. Yeah.

17 Q. Let's continue then.

18 (Tape played.)

19 Q. Two things. There's a discussion about
20 calling Chris up above to get a piece and all that.
21 What does that mean?

22 A. Still the same conversation, to get the
23 weapon.

24 Q. And when you say you can't just -- you can
25 ask the computer how to find the Secretary of

1 Defense, and it tells you, did you mean to say
2 Secretary of Corrections, or did you really mean
3 Secretary of Defense there?

4 A. I'm just exaggerating. I think I
5 mentioned in there, it isn't going to tell me where
6 he lives anymore. Doesn't tell me what cell he's in
7 or what prison he's in, or tell me he's in prison.
8 But it doesn't even tell me his address anymore.

9 Q. You can't just put information in and it
10 magically appears on your computer.

11 Let's continue.

12 (Tape played.)

13 Q. Do you know who he's referring to when he
14 says "Jake"?

15 A. Yeah, Big Jake.

16 Q. Is that Jake Armijo?

17 A. Yeah.

18 Q. In a little bit there will be discussion
19 of someone named Stoner.

20 A. Yeah.

21 Q. Do you know who that person is?

22 A. Yeah.

23 Q. Who is that person?

24 A. I don't know his real name.

25 Q. But you know who that person is? You

1 don't know his real name?

2 A. No.

3 Q. Is it common, when you talk on the phone,
4 for people to ask what the brothers are doing on the
5 streets?

6 A. I didn't really talk to a lot of people on
7 the phone from prison. I would talk to them when I
8 lived there. Like I said, at this point I distanced
9 myself a lot. I talked to some of the brothers, but
10 they were also my friends before this, and they
11 would be my friends probably after. So those are
12 the people I talked to.

13 Other than that, I did my own thing. I
14 distanced myself as much as I could.

15 Q. In a little bit, there's also going to be
16 a discussion about someone named Chuco or Mandel.

17 A. Yeah.

18 Q. Who is that?

19 A. That's another brother.

20 Q. What's Mandel's name?

21 A. Mandel Parker, Chuco.

22 Q. At some point we might hear some
23 recordings, but did Mandel Parker somehow get
24 involved with this scheme?

25 A. Yeah.

1 Q. How did that happen?

2 A. I asked him if he -- Pup told me, "If you
3 want to take somebody else, you pick them. It's up
4 to you. You're responsible."

5 I asked Mandel if he wanted to participate
6 and put him on the phone with Pup, I believe, or
7 tried to get him on the phone with him. Mandel's
8 girlfriend thought he was talking to some chick on
9 the phone, talking to some girl, so she kept on
10 coming out there and getting mad at him, so he got
11 out.

12 Q. What was your explanation to Mandel Parker
13 about what was going on?

14 A. I told him, "They want us to hit the
15 Secretary of Corrections, and in exchange for
16 that" --

17 MR. LOWRY: Your Honor, there has not been
18 one word about the Secretary of Corrections on this
19 tape, and he keeps bringing up the Secretary of
20 Corrections.

21 MR. CASTELLANO: He's actually explaining
22 his conversation to Mandel Parker and how he got
23 involved, Your Honor.

24 THE COURT: Well, I think that it's
25 closely related, so I'll overrule the objection.

1 BY MR. CASTELLANO:

2 Q. Okay. So tell us about his conversation.

3 You tell him that you want --

4 A. We're supposed to hit somebody in the
5 Department of Corrections. And in exchange for
6 that, we would get this recognition, and he said,
7 "All right, cool."

8 Q. Did you tell Mandel Parker who you were
9 doing this with?

10 A. I had to tell him I was talking to Pup,
11 and not on the phone.

12 Q. And did you mention Chris Garcia's name
13 when you mentioned this to Mandel Parker?

14 A. Yeah, I told him we were going to get some
15 weapons from Chris, and Mandel had been trying to
16 get in with Chris for a long time because he wanted
17 part of the dope. So he was down for that, too. He
18 was game.

19 Q. So from your conversation with Mandel
20 Parker, did he join this conspiracy with Chris
21 Garcia and Mr. Baca?

22 A. Yeah.

23 Q. Okay. Let's continue.

24 (Tape played.)

25 Q. You said, just real quickly, "when Jake is

1 going to school"?

2 A. I had his number. Yeah, he was going to
3 school. And I had his number. I didn't want to
4 give it to him.

5 Q. Did you know what he was going to school
6 for?

7 A. No.

8 Q. And what kind of school was it?

9 A. I think it was community college.

10 Q. Please continue.

11 (Tape played.)

12 Q. "We're going to holler at Chris right now
13 and get you that"?

14 A. Right, weapon.

15 Q. Get you the weapon.

16 And earlier, you talked about brothers
17 being strung out or strung out bad. What does that
18 mean?

19 A. Addicted to heroin, just doing bad.

20 Q. Let's continue.

21 (Tape played.)

22 Q. Okay, Mr. Montoya, I have another exhibit,
23 Exhibit 334. We're going to be playing just
24 portions of this recording. So I'll have you just
25 listen carefully, and we'll have some more questions

1 about it. Is this also one of the recordings you
2 heard prior to your testimony?

3 A. Yeah.

4 MR. CASTELLANO: Your Honor, at this time,
5 I move the admission of Government's Exhibit 334.

6 THE COURT: There not being any other
7 argument on this tape, the Court will admit
8 Government's Exhibit 334.

9 (Government Exhibit 334 admitted.)

10 MS. JACKS: Your Honor, may we please have
11 a limiting instruction as to 380 and 334?

12 THE COURT: Yeah. These are all
13 conversations of Mr. Baca, so you'll need to only
14 consider the testimony and the evidence against Mr.
15 Baca in deliberating on the charges against him, and
16 you may not consider it as evidence against the
17 other three gentlemen.

18 MR. CASTELLANO: Your Honor, at this
19 point -- I should have asked earlier -- can we also
20 have the instruction on recordings and transcripts
21 reread to the members of the jury?

22 THE COURT: Yeah. Let me see if I can
23 find that quickly.

24 MR. CASTELLANO: I just want to make sure
25 they know they'll have the recordings but not the

1 transcripts for the deliberation.

2 THE COURT: All right. During this trial
3 you have heard sound recordings of certain
4 conversations. These conversations were legally
5 recorded. They are a proper form of evidence and
6 may be considered by you as you would any other
7 evidence. You were also given transcripts of those
8 recorded conversations. Keep in mind that the
9 transcripts are not evidence; they were given to you
10 only as a guide to help you follow what was being
11 said. The recordings themselves are the evidence.
12 If you noticed any differences between what you
13 heard on the recordings and what you read in the
14 transcripts, you must rely on what you heard, not
15 what you read. If you could not hear or understand
16 certain parts of the recordings, you must ignore the
17 transcript as far as those parts are concerned.

18 Why don't we take up playing it after the
19 break? Let's break now. And it's a little early
20 for lunch, so why don't we take a 15-minute break
21 and we'll come back, and then we'll take a little
22 bit later lunch today. All rise.

23 (The jury left the courtroom.)

24 THE COURT: All right. We'll be in recess
25 for about 15 minutes.

1 (The Court stood in recess.)

2 THE COURT: All right. We'll go on the
3 record. Is there anything we need to discuss before
4 we bring the jury in, Mr. Castellano?

5 MR. CASTELLANO: Your Honor, I move the
6 admission of 334. I just want to make sure it's
7 been admitted before I played it. That's all I
8 have.

9 THE COURT: Yeah, I've got it down 356,
10 380, and 334 have been admitted into evidence.

11 MR. LOWRY: Your Honor?

12 THE COURT: Mr. Lowry.

13 MR. LOWRY: I don't have any objection,
14 but I just want to make a record. Since we've done
15 the back and forth, obviously the defense teams
16 haven't had time to preview the audios since they've
17 been edited. I just want to make a record of that.
18 I'm in good faith working with the Government to
19 make sure these things are done correctly, but just
20 in case there is a technical faux pas, I just wanted
21 to reserve that right.

22 MR. CASTELLANO: If we can have a couple
23 of minutes, I can show defense counsel this next
24 exhibit has ten clips. I'm happy to show him the
25 transcript. It might take a couple of minutes.

1 It's fine with me.

2 THE COURT: Well, does he have a copy of
3 the transcript?

4 MR. CASTELLANO: He does, but not the ten
5 clips that I'm going to be using from the
6 transcript.

7 THE COURT: All right. Why don't we make
8 a copy for him, and he can be looking on while we're
9 playing it. Probably there's no problem, so we
10 won't stop for it. But can you just hand it to
11 Mr. Hammond, Mr. Castellano?

12 MR. CASTELLANO: Yes, Your Honor.

13 THE COURT: We'll hand it back to you real
14 quick. He'll make a real quick copy.

15 All right. All rise.

16 (The jury entered the courtroom.)

17 THE COURT: All right. Mr. Montoya, I'll
18 remind you that you're still under oath.

19 THE WITNESS: All right.

20 THE COURT: Mr. Castellano, if you would
21 like to continue your direct examination of Mr.
22 Montoya, you may do so now.

23 MR. CASTELLANO: Thank you, Your Honor.

24 With the Court's permission, I will begin
25 playing Exhibit 334. This is a longer exhibit which

1 has been cut into 10 pieces for the jury to hear
2 portions of it.

3 THE COURT: All right. You may.

4 MR. CASTELLANO: I'll begin with the first
5 clip.

6 (Tape played.)

7 BY MR. CASTELLANO:

8 Q. Okay. Just to start off here, you
9 mentioned the name Chuco here. And are you at
10 Chuco's house? Where is his car?

11 A. His car is at his girlfriend's house.

12 Q. You mentioned the name "Chuco" earlier.
13 Is that the person you referred to as Mandel Parker?

14 A. Yes.

15 Q. Is Mandel Parker with you at this time?

16 A. I think I'm at his house. I don't know if
17 he's in the car with me at this time, but he's in
18 and out, talking to his girlfriend and getting high,
19 running around.

20 Q. And are you actually helping him fix his
21 vehicle at this point?

22 A. Yeah, I'm looking at it, seeing what it
23 needs.

24 Q. Let's continue, please.

25 (Tape played.)

1 Q. All right. "I was trying to get that
2 thing. You know?"

3 A. The weapon.

4 Q. What's your understanding of what that is?

5 A. The weapon.

6 Q. Okay. Let's continue.

7 (Tape played.)

8 Q. Why are you mentioning a fund raiser for
9 fallen heroes to Mr. Baca?

10 A. I'm telling him there are a lot of people
11 that are going to be there, especially the people I
12 need to rap to. That means the people I want to
13 reach out and touch, the COs, law enforcement types,
14 the people he wants.

15 Q. I think it's pretty clear, but when you
16 say you're going to reach out and you need to rap to
17 them or you're going to reach out and touch them,
18 what are you supposed to be doing?

19 A. I'm supposed to be murdering one of them.

20 MR. CASTELLANO: May I have a moment, Your
21 Honor? I'm going to give this to defense counsel.

22 THE COURT: All right.

23 BY MR. CASTELLANO:

24 Q. I apologize, Mr. Montoya. Let's continue.

25 (Tape played.)

1 Q. You don't want to rap to anybody there?

2 A. Don't want to actually do anything there.

3 Q. So you want to locate people at this
4 place, but not do anything at the location?

5 A. Yeah.

6 Q. Okay. And then Mr. Baca responds, "You
7 don't even wanna show your face"?

8 A. Yeah, I don't want to be seen there. I
9 don't want nobody to be able to say they seen me
10 there.

11 Q. Let's continue.

12 (Tape played.)

13 Q. What does it mean when you say "Washa"?

14 A. I think he says to somebody, "Look, this
15 is what I'm saying," yeah? It means, "Pay
16 attention," kind of.

17 Q. What's the purpose of buying a GPS device
18 at Auto Zone?

19 A. At this time, I'm making up a scenario
20 that's plausible to him, that I'm going to go with
21 the fallen heroes and put the GPS on somebody's car
22 and follow them to their home or to wherever for the
23 purposes of carrying out the murder.

24 Q. Let's continue the recording.

25 (Tape played.)

1 Q. What does it mean when someone says,
2 "That's ferme" right there?

3 A. That means that's good. "Ferme" means
4 good.

5 Q. Let's continue.

6 (Tape played.)

7 Q. A couple of things. The first one is,
8 "You haven't run it down or nothing with your
9 brother, Chuco." What are you explaining to Mr.
10 Baca?

11 A. That I'm going to need help following or
12 tracking or committing this crime, so I'll take
13 Chuco, and he's telling me, "Life is full of risks.
14 Do you want to take a risk with you?" He's telling
15 me -- referring to Chuco as the risk.

16 Q. So he just wants to make sure you know
17 what you're doing before you get Chuco involved?

18 A. Yeah, just somebody that could help.

19 Q. Now you're indicating that you are going
20 to need two of them. What are you referring to?

21 A. Two weapons.

22 Q. Let's continue.

23 (Tape played.)

24 Q. When he says, "I'm going to get some feria
25 from him so I can give it to the other dude," do you

1 know what he's talking about there?

2 A. I think he's talking about the second
3 weapon. He had talked earlier about possibly
4 getting one from one of his cousins, or something
5 like that, and I think he was saying he's going to
6 get the money from Chris to get the other weapon
7 from the other dude.

8 Q. Let's continue.

9 (Tape played.)

10 Q. Why would you need an emergency fund for
11 afterwards?

12 A. Just in case of being hunted by law
13 enforcement for this, at least.

14 Q. Okay. So in other words, if this scheme
15 goes through, you may have to go on the run?

16 A. Yeah.

17 Q. Let's continue, please.

18 (Tape played.)

19 Q. Okay. Put what in your hands? And what
20 does the green light refer to?

21 A. A mission. Just leave it up to me and
22 tell me what you want done, and I'll get it done.

23 Q. What does the green light refer to?

24 A. Okay. That's okay.

25 Q. Let's continue.

1 (Tape played.)

2 Q. What are you asking of Mr. Baca here, when
3 you want to make sure that brothers know it's legit?

4 A. I'm asking him to -- all right, so if I
5 say, "Chuco, Pup wants us to go do this," Chuco can
6 say, "I want to hear that from Pup."

7 And I'm telling Pup, "You might have to
8 tell him."

9 He's, like, "I will, but I don't really
10 want to. They should listen to you."

11 Well, I'm like, "Well, they might need
12 your word."

13 Q. Let's continue.

14 (Tape played.)

15 Q. And what are you referring to, a request
16 to cosign?

17 A. Give his word.

18 Q. I'm going to move to the second clip for
19 you. Let's begin playing.

20 (Tape played.)

21 Q. Since I jumped ahead in the recording
22 here, do you know who you're talking about when you
23 talk about --

24 A. I think I'm talking about JR, Jerry
25 Montoya. I think I'm asking if he has a good

1 attitude about what's going on. Is he doing all
2 right? Is he depressed? Is he tripping?

3 Q. What did you know was going on with him at
4 that time?

5 A. I believe that he was suspected in playing
6 a role in the murder of Javier Molina.

7 Q. Okay. Let's continue.

8 (Tape played.)

9 Q. Do you know who Trigger is?

10 A. I've heard of the name. I don't really
11 know him personally.

12 Q. What are you talking about, bringing
13 brothers closer together?

14 A. I was asking about JR's attitude, Jerry
15 Montoya's attitude. Because he was about to get out
16 of prison. He had just done a lot of time. I don't
17 know how much. But they waited until he was about
18 to get out, and then asked him to kill somebody.
19 Not asked him; pretty much he had no choice. It was
20 either him --

21 MR. LOWRY: Objection, Your Honor,
22 speculation.

23 THE COURT: Overruled.

24 A. So anyway, that's what I was asking him
25 about. And pretty much Pup saying all them other

1 guys that were involved --

2 MR. LOWRY: Objection, hearsay, Your
3 Honor.

4 THE COURT: He's about to say what Mr.
5 Baca said; correct?

6 MR. CASTELLANO: It's a statement by a
7 party opponent, Your Honor.

8 THE COURT: All right.

9 A. Okay. So I lost track of what I was
10 saying, because I'm kind of burnt. Basically --

11 THE COURT: Why don't you maybe ask him a
12 question, so --

13 BY MR. CASTELLANO:

14 Q. You're having a little discussion about
15 the Molina murder, and the fact that --

16 A. I didn't think it was right that JR was
17 asked to do that. That's one of the reasons that I
18 got out of this gang, but -- so that's why I'm
19 asking about him and his attitude. And later on in
20 this conversation he's saying that all the guys that
21 are involved in that are acting all fucked up. I
22 take that to mean that these guys are either
23 telling, or they're dropping out of the gang.

24 MR. LOWRY: Objection --

25 THE COURT: Hold on.

1 MR. LOWRY: -- this is hearsay and
2 speculation. He's saying "I think that" --

3 THE COURT: Well, I think he can testify
4 about some of it.

5 Why don't you lead him through, because
6 there are some statements that Mr. Lowry may want to
7 object to and others that he doesn't. So why don't
8 you lead him through and get what you want?

9 MR. CASTELLANO: He was referring to a
10 statement by Mr. Baca, actually, and what he
11 understood that to mean when he was talking about
12 the other people.

13 THE COURT: Go ahead and lead him through
14 and get what you want out of him, and then we'll
15 move on.

16 BY MR. CASTELLANO:

17 Q. All right. So you mentioned a discussion
18 with Mr. Baca about other members from -- other
19 people from the Molina murder. And what was his
20 reaction to you or his response about what's going
21 on with the other people?

22 A. On line 22, Pup says, "Yeah, but Trigger
23 is acting all fucked up."

24 I take that to mean that Trigger is
25 telling -- or he's going to the dropout program.

1 Pup goes on to say in line 23 through 25, all the
2 way down to 1 through 7, I asked him "Why is that?"

3 He says, "It's no good."

4 "Yeah, brother. I hate to see that kind
5 of -- I hate to see it go down like that. What
6 happened to when everybody -- when it would bring
7 them closer, now all it does is drive them apart.
8 You know what I mean?"

9 Pup responds, "Hey."

10 I say, "Hey."

11 Pup said, "All of them mother-fuckers are
12 all over there on that fucking dropout program." So
13 the dropout program is the RPP Program.

14 Q. So guys checked out?

15 A. Checked-in is a prison term.

16 Q. All right. Let's turn to the next portion
17 of this larger audio clip.

18 (Tape played.)

19 Q. Who is Mr. Baca asking you to reach out
20 to?

21 A. We're talking about Shawn-Shawn, Shawn
22 Ural.

23 Q. And at this point, is there discussion
24 about trying to kind of reunite SNM and get
25 everybody back in line?

1 A. Yeah. I'm telling him that Shawn is doing
2 his own thing, and he's trying to distance himself
3 and I have no problem with it, I'm telling him,
4 pretty much. He doesn't want nothing to do with
5 this.

6 Q. And you see the discussion about Mr. Baca
7 wanting to establish some type of relationship over
8 again?

9 A. Yeah, he's trying to use me to get to them
10 to bring them back in and group them back up and try
11 to reestablish some kind of morale.

12 Q. Let's continue.

13 (Tape played.)

14 Q. Who is Arturo?

15 A. Arturo Garcia.

16 Q. And what was the issue with him?

17 A. He's using everybody so he can get high,
18 pretty much.

19 Q. And you referred to different tablas.
20 What is that referring to?

21 A. What I spoke about earlier. It went from
22 no leader to we pretty much force people into that
23 position. All of us said, "Yeah, you're our
24 leader," to Gerry Archuleta, Styx, claiming to be
25 the new leader. Then after that, different boards,

1 different -- whoever had the dope, or whoever had
2 the charisma to pull a few people together and use
3 that as a ruling body.

4 Q. And did you tell Mr. Baca up top that
5 Shawn Ural, because of all the politics and
6 everything, wanted to create distance between
7 himself and the SNM?

8 A. Shawn used to drive around with a cat, a
9 real live cat in the truck and say, "If I'm going to
10 cruise around with a bunch of pussies, at least this
11 one is not going to tell on me."

12 Q. That was it?

13 A. That was it.

14 Q. All right. Continue.

15 (Tape played.)

16 Q. Okay. A few things here. He talks about
17 not sending clavo. What is that?

18 A. Arturo and them -- that's all they cared
19 about. They sent a message out there that if you
20 don't send some dope, when you come back here, do.
21 Talking about doing what's right with the car.
22 They're not asking for all that. They're just
23 asking for us to give up our lives and go murder a
24 member of the Department of Corrections and give up
25 our life and our family. They're not asking for

1 dope at this point.

2 MR. LOWRY: Objection; it's not responsive
3 to the question.

4 THE COURT: Overruled.

5 BY MR. CASTELLANO:

6 Q. When you referred to esquina here, is that
7 the same word as help that you mentioned earlier?

8 A. Yeah, esquina means backup, help.

9 Q. And then doing what's right for the
10 ranfla?

11 A. Ranfla is a slang word for car in Spanish.
12 The car refers to the gang, the SNM; our car.

13 Q. So your car refers to your gang?

14 A. Yes.

15 Q. Let me draw your attention to the next
16 portion, the next clip. Let's begin playing.

17 (Tape played.)

18 Q. So when he refers to you helping out the
19 carnal Chuco, remind us what you're doing with Chuco
20 right there.

21 A. I'm helping him fix his car. I haven't
22 agreed with all those statements. It's just not
23 like that. Nobody else does it.

24 Q. Okay. So it's a nice idea, but when it
25 comes to the way it really works, does it really

1 work out that way?

2 A. This is just a bunch of manipulation,
3 trying to get me all patriotic about this gang; that
4 way, I can go kill somebody for him.

5 Q. Let's continue.

6 (Tape played.)

7 Q. Okay, you've got a hater in the group, and
8 they need be handled. How are you supposed to
9 handle that person?

10 A. Well, there is only one punishment for
11 brothers, is death.

12 Q. So if people are causing problems in the
13 gang, then they have to be dealt with?

14 A. Yeah.

15 Q. Let's continue.

16 (Tape played.)

17 Q. What does it mean when you say, "Si me
18 entiendes"?

19 A. "Do you understand me?"

20 Q. What's this talk about little homies and
21 these 14-, 15-, 16-year-olds?

22 A. Wants me to start trying to recruit them
23 when they're young, bring them, make them look up to
24 me. That way, when they do get to the prison,
25 they're already leaning towards the SNM.

1 Q. Was that kind of your experience, too,
2 when you were younger?

3 A. Yeah?

4 Q. Let's continue.

5 (Tape played.)

6 Q. What is respeto?

7 A. Respect.

8 Q. And when jale needs to be done, what's
9 jale?

10 A. Work.

11 Q. Let's continue.

12 (Tape played.)

13 Q. "Look out for," is that word "pisto"?

14 A. He's saying buy them liquor, pretty much
15 lead them down the wrong path, pretty much get them
16 strung out, teach them how to do stuff. Keep them
17 looking up to you, keep them coming to you.

18 Q. At this point, this also means recruiting
19 people into the gang?

20 A. Pretty much telling, yeah.

21 Q. Okay. Let's move to the next clip. Let's
22 begin.

23 (Tape played.)

24 Q. Who is Weasel, if you know Weasel's name?

25 A. Ben Sandoval. He's a friend of mine since

1 the boys' school.

2 Q. What was his name?

3 A. Ben Sandoval.

4 Q. Was he an SNM member also?

5 A. Yes.

6 Q. And once again, are you supposed to be
7 reaching out to him and bringing everybody back
8 together?

9 A. Yeah. What I understand is, he wants me
10 to try to organize out there again, try to, like I
11 said, bring people back under the control.
12 Everybody has had it; everybody is done; everybody
13 is trying to get away from all this.

14 Q. And down below we'll see a reference to
15 Shawn-Shawn. Is that the same Shawn Ural you
16 referred to earlier?

17 A. There is only one Shawn-Shawn. There are
18 a few Dreamers and a few other nicknames, but
19 Shawn-Shawn is kind of unique.

20 Q. When we hear the name Arturo, is that the
21 same Arturo you told us about earlier?

22 A. Yeah.

23 Q. Let's continue.

24 (Tape played.)

25 Q. A few things here. When he talks about

1 getting Shawn-Shawn off whatever viajes he's on,
2 what does that mean?

3 A. He's talking about the mentality that all
4 of us have, just trying to get away. And whatever
5 trip his mind is on, try to get him out of that, and
6 try to bring him back.

7 Q. What's the need to find out who is who
8 when you're talking to brothers out there?

9 A. He means this dropout program is actually
10 helping us, because it's thinning out the herd,
11 getting rid of the weak ones, and we don't have to
12 kill them. They're getting them for us.

13 Q. At this point, you mentioned starting
14 over. Is this before the indictments came down in
15 December of 2015?

16 A. Yes.

17 Q. And the topic of reorganization?

18 A. Yeah.

19 Q. Let's move to the next clip.

20 (Tape played.)

21 Q. Okay. What does it mean to school
22 somebody right?

23 A. Teach them the right rules and teach them
24 how to carry themselves like a brother.

25 Q. "And if he doesn't do it, he's going to

1 get touched." What does that mean?

2 A. That means he's going to get killed.

3 Q. Let's continue.

4 (Tape played.)

5 Q. Okay. So are you saying here basically,
6 "We had rules before. We just need to enforce the
7 ones that were in place"?

8 A. Yes.

9 Q. And earlier you were talking about the
10 paralegal paperwork and I said, "We'll get to it
11 later." Is this what you were referring to about
12 making allegations against other SNM members without
13 paperwork?

14 A. When I got into this gang and stuff like
15 that, it was honor among thieves, I guess is what
16 you would call it. Not only amongst us; it was
17 among convicts in general. If you called another
18 convict a rat, no matter who you are, you had, like,
19 a week, or in some cases less, to come up with that
20 paperwork and prove him to be a snitch. If not,
21 then you would get hit.

22 And it wasn't like that no more. And then
23 you can have paperwork on somebody, as long as he
24 has dope and he's good. And a guy that has the dope
25 could call somebody else a rat and not have a shred

1 of paperwork and get him killed, you know? So
2 that's not my ideal environment.

3 Q. Let's continue.

4 (Tape played.)

5 Q. Is that what you're referring to, the way
6 it should be?

7 A. That's the way I would expect it to go
8 when I got into this game. I was a true believe in
9 this stuff, and it turned into all this other stuff.
10 But yes, that's what I was talking about.

11 Q. All right. Let's turn to the next clip.

12 (Tape played.)

13 Q. All right. There are a number of things
14 here. When it refers to the jura, who are the
15 juras?

16 A. They are the law enforcement, police, or
17 COs.

18 Q. I'm underlining here J-U-R-A in the
19 transcript. Is that what the jura is, refers to the
20 corrections officers?

21 A. Yeah.

22 Q. And what's Mr. Baca's complaint about
23 STIU?

24 A. That's his kind of MO. He gets you all
25 patriotic about the gang, and then he turns it to

1 what he wants out of this. "Yeah, yeah, that's the
2 way it should be. But look, we want these killed."

3 Q. Is he expressing his dislike for the STIU
4 here?

5 A. Yeah.

6 Q. And when he refers to "creating wedges
7 between us --"

8 A. Causing problems, trying to break up the
9 gang, try to turn us on each other.

10 Q. And you respond by referring to divide and
11 conquer?

12 A. Yeah.

13 Q. It's the same thing? Let's go ahead and
14 turn to the next portion. Let's begin.

15 (Tape played.)

16 Q. What does it mean to cross brothers out?

17 A. Give them a bad name or take them out.

18 Q. And then what's the problem with the
19 rumors that's being discussed here?

20 A. We're still talking about the same stuff,
21 people are dying off of rumors. And people that
22 started the rumors are sitting right there doing
23 whatever they've got to do for dope and manipulating
24 people into doing other things for them, and that's
25 it.

1 Q. Okay. Let's begin the next clip.

2 (Tape played.)

3 Q. So this is a continuation of the
4 discussion about taking care of the members who were
5 causing problems?

6 A. Yeah.

7 Q. Let's turn to the last clip from this
8 audio and let's begin.

9 (Tape played.)

10 Q. Okay. You don't want your name all over
11 in there. What are you talking about?

12 A. I never gave information the whole time I
13 was in prison to STIU, to anybody, acting as an
14 informant for anything. But I was all slammed down
15 all the time for confidential information, or
16 because there is a hit on me, or something. And
17 that's what I was talking about. I was telling him,
18 I don't want my name -- you tell anybody my name,
19 because if you tell anybody my name, then there goes
20 my name to STIU, and then I'm a snitch and I'm an
21 informant and anything else. So just keep my name
22 out of the conversation. That's what I'm asking him
23 to do.

24 Q. When he talks about you guys speaking on
25 the down-low right now --

1 A. That's just between me and him.

2 Q. So you don't want any of this information
3 getting out.

4 A. Yes.

5 Q. Let's continue.

6 (Tape played.)

7 Q. Earlier you said you were going to send
8 pictures to Eric Duran. Did you actually send him
9 some?

10 A. Yes.

11 Q. Were you verifying whether or not Mr. Baca
12 also sought pictures?

13 A. I was trying to lighten up the
14 conversation, turn it into a joke. I think I said,
15 "If you see something like that, it would probably
16 give you a stroke."

17 Q. At this time I'm going to move to another
18 recording, Mr. Montoya. This is Government's
19 Exhibit 394. I'm only going to play a portion of
20 this recording.

21 MR. CASTELLANO: At this time, Your Honor,
22 I move the admission of Government's Exhibit 394?

23 THE COURT: 394?

24 MR. CASTELLANO: Yes.

25 THE COURT: Any other discussion on that?

1 Not hearing any, then Government's Exhibit 394 will
2 be admitted into evidence.

3 (Government Exhibit 394 admitted.)

4 MS. JACKS: And, Your Honor, again, we ask
5 for a limiting instruction.

6 THE COURT: And these are continuing to be
7 discussions with Mr. Baca, so you're only to
8 consider these in your deliberations, this testimony
9 and this evidence, in conjunction with your
10 deliberation of the charges against Mr. Baca, not
11 against the other three defendants.

12 MR. LOWRY: Your Honor, may I have a quick
13 word with Mr. Castellano?

14 THE COURT: You may.

15 BY MR. CASTELLANO:

16 Q. We're going to play just one portion of
17 this audio. Once again, is this an audio that was
18 captured from the wiretap on your phone?

19 A. So far, it has been.

20 Q. Okay. So at this point I'm going to play
21 for you one portion of Government's Exhibit 394 and
22 let's begin.

23 (Tape played.)

24 Q. Okay. Now, in the transcript there is the
25 name Garcia as the person who has just spoken. Who

1 is that person?

2 A. That's Chris Garcia.

3 Q. So at this point, how are you talking to
4 Mr. Garcia, if you remember?

5 A. I'm talking to him face to face, I think.

6 Q. Now, why are you discussing
7 Mr. Santistevan and Mr. Marcantel here with him?

8 A. Chris is -- like I said earlier, at this
9 point, he's, like, "What are they thinking? They're
10 being kind of stupid. They're in the Violent
11 Predatory Program. What's next? The "Violent"
12 Violent Predatory Program? It's going to keep on
13 going."

14 And then when Pup told him it was
15 Santistevan that he was suggesting, Chris told Pup
16 that Santistevan didn't have the authority to send
17 him to a federal prison or send him out of state.
18 It had to be someone higher up. It had to be
19 Marcantel or one of them guys.

20 Q. Let's continue.

21 (Tape played.)

22 Q. Okay. Now, earlier, in another
23 conversation with Mr. Baca, you talked about "If
24 we're going to do this, do it big."

25 Are you referring to that conversation now

1 with Mr. Garcia?

2 A. Yes.

3 Q. And you got mentioned here once again
4 Barney Rubble. Who is that?

5 A. Adam Vigil.

6 Q. What's your suggestion about whether or
7 not you guys should be focusing on Adam Vigil as
8 somebody to be murdered?

9 A. He might be -- like in that one prison, he
10 might be one of the higher-ups, even a manager, part
11 of administration. But in the Department of
12 Corrections, he's really not making the decisions
13 outside of that unit. He's not deciding who goes to
14 what state. He's not getting them shipped out.
15 He's not doing that.

16 Q. Okay. Let's continue.

17 (Tape played.)

18 Q. Do you remember who LJ was?

19 A. He was Leonard Jaramillo, I believe was
20 his name. He was a regular CO. When I got to
21 prison, he moved up to STIU, and then he was
22 eventually the warden. And I think he got fired for
23 sexual harassment or something like that.

24 Q. And who was the discussion of the other
25 person, either Carlos Valdez or Vigil?

1 A. Adam Vigil was the lieutenant when we came
2 to prison. Carlos was the regular CO and moved up
3 to that position -- I think he was the unit manager
4 also.

5 Q. This recording does sound different, so
6 you think you were speaking face-to-face with
7 Mr. Garcia on this?

8 A. Yeah, I was face-to-face.

9 Q. And did you have a different type of
10 recording device to record this conversation?

11 A. Yeah.

12 Q. Was that provided by the FBI?

13 A. Yes.

14 Q. Okay. Now, eventually, at some point, as
15 you referenced earlier, did Mr. Garcia agree to
16 become part of this conspiracy against Mr.
17 Marcantel?

18 A. Yeah, he gave me a lot of advice about it.
19 He told me he actually seen him at the Red Ball Cafe
20 in Barelvas, in Albuquerque. He told me I should go
21 to the barber shop and pick up a few hair samples
22 and rub them on the gun and stuff like that.

23 Q. Why would you get hair samples and put
24 them on the gun?

25 A. DNA, to misdirect the investigation.

1 Q. And as a result of his agreement, then,
2 did he also provide you a gun for the purpose of
3 murdering Gregg Marcantel?

4 A. Yeah, he gave me a .22 automatic pistol
5 without a clip. A handful of bullets, I think.

6 Q. On this occasion, do you remember this
7 being November 29 of 2015?

8 A. Sounds about right. But I couldn't swear
9 that that was the date.

10 Q. And if you recall, do you remember if this
11 was close in time to when everybody was arrested in
12 this case?

13 A. Yeah, it was all within a couple-month
14 period that all these conversations took place. And
15 the arrests were made and I left.

16 Q. And do you pick up the weapon from Chris
17 Garcia's house? Where do you meet him to get the
18 pistol?

19 A. I got it at Chris' house.

20 Q. And in terms of the operation that day,
21 what did you do beforehand? Did you meet with law
22 enforcement? Did you go there on your own? What
23 happened?

24 A. I met with law enforcement at -- I think
25 it was a Victory Outreach Church or Legacy Church.

1 It used to be called Victory Outreach in
2 Albuquerque. And from there they searched me, gave
3 me the recording device, and send me on my way. I
4 drove to Chris' house. He talks about -- sat there
5 with him, got the weapon, kept telling me about this
6 nice shotgun he had. He wouldn't give it to me. He
7 gave me a .22.

8 Q. And at this point in the investigation,
9 who was now on board to murder Gregg Marcantel? Who
10 else have you talked to about following through with
11 this plan?

12 A. Me and Chuco and Pup, Chris. I guess
13 Crazo, but he was on the other side of the
14 investigation. He was on you guys' side. And as
15 far as I knew, that was it. But I assume that he
16 had talked to other people about it.

17 Q. And so from meeting with law enforcement,
18 do you then drive to Christopher Garcia's house?

19 A. Yeah. I stay there, talk to him for a
20 while. He gives me the gun and keeps telling me
21 about -- he's kind of nervous, kind of paranoid,
22 telling me that the person who lives kitty-corner
23 from him is a sheriff, and the cars come down the
24 road all the time, and stuff like that.

25 But he finally gives me the weapon and I

1 leave. And I see the officers pass by his house a
2 few times. I got kind of nervous about it,
3 actually. I even mentioned it to Chris, "Who is
4 that? Who is in that car?" or whatever. I get the
5 weapon, I leave.

6 And I don't think I met back at the
7 church. I think they wanted me to pull over pretty
8 much immediately, as soon as I could find a safe
9 place, and I was trying to get further away from
10 Chris' house. I eventually pulled over, and I think
11 it was an alley off of 98th Street, I think, maybe,
12 or Unser. So I pulled into the alley and they
13 searched me. They didn't let me touch anything.
14 Pulled the weapon out of my pocket, asked me where
15 it was, got it, got the recording device, got
16 everything off me, searched me, and let me go.

17 Q. Okay. And was this interaction with
18 Mr. Garcia recorded?

19 A. Yes.

20 MR. CASTELLANO: I'm going to go ahead and
21 at this time, Your Honor, I move the admission of
22 Government's Exhibit 396.

23 THE COURT: All right. Any other
24 discussion on that? The Court will admit
25 Government's Exhibit 396.

1 (Government Exhibit 396 admitted.)

2 MR. CASTELLANO: Your Honor, this
3 recording is broken up into two separate recordings,
4 two separate clippings. Let's begin with the first.

5 (Tape played.)

6 BY MR. CASTELLANO:

7 Q. What kind of dog is this, for starters?

8 A. A little, tiny Pomeranian.

9 Q. Sounds like an ankle-biter.

10 A. Yeah, I used to make a joke. I used to
11 tell him, "You look like Dr. Evil driving around
12 with a Pomeranian." He used to drive around with a
13 dog, too.

14 Q. Pretty early on in this discussion, he's
15 asking you about -- "it shoots .22 long rifle in
16 there." What is he referring to, and what is he
17 doing at this time?

18 A. I don't know if he's actually pulled it
19 out at this point, but at one point he does pull it
20 out. He's talking about the weapon. It's a .22
21 long rifle, like I said, without a clip. He pulls
22 it out, pulls the slide back, and tells me where the
23 bullet goes, as if I didn't know. Tells me, "You
24 put the bullet in there, you shoot, and don't worry;
25 it will kill somebody."

1 And at this time, I'm thinking, You're
2 really going to send me against Gregg Marcantel with
3 a .22 long rifle without a clip?

4 Q. Let's continue.

5 (Tape played.)

6 A. He has it out at this point. That's the
7 slide.

8 Q. Okay.

9 (Tape played.)

10 Q. Okay. So do you know what he's referring
11 to when he says, "You can get a clip for it as
12 well"?

13 A. He's telling me to order one.

14 MR. CASTELLANO: And may I approach, Your
15 Honor?

16 THE COURT: You may.

17 BY MR. CASTELLANO:

18 Q. Mr. Montoya, I'm going to show you briefly
19 Government's Exhibit 278. I'm going to put it here
20 on the screen. Does that look familiar to you, if
21 you remember?

22 A. Yeah. Yeah.

23 Q. What does it look like?

24 A. Like a .22 pistol without a clip.

25 Q. Now, I'm going to show the underside of

1 this weapon here. Can you see where my finger is,
2 where it's hollow?

3 A. Yes.

4 Q. So for those who are less familiar with
5 firearms, what belongs in this hollow space?

6 A. The clip.

7 Q. And what goes inside of the clip or the
8 magazine?

9 A. The ammunition.

10 Q. So once you put a magazine and you insert
11 it into the bottom here, does that allow you to fire
12 more than just one round of ammunition?

13 A. That's an automatic pistol. That's why
14 it's called an automatic. You put the clip in the
15 bottom, slide it back, it chambers the first round.
16 After that, it's on automatic. It chambers the next
17 round automatically with the recoil of the last
18 round.

19 Q. Is it designed, then, to fire a bullet
20 every time you pull the trigger after that?

21 A. Until you run out.

22 Q. Okay, and so then for this to work, you
23 would either have to kill Mr. Marcantel with one
24 shot or get a magazine to get additional rounds of
25 ammunition; is that correct?

1 A. Or carry a pocketful of bullets and put
2 them in one at a time.

3 Q. Okay. Let's continue with the recording
4 please.

5 (Tape played.)

6 Q. Let me stop you there. Okay, what is he
7 asking you when he says, "Who's the one going?"

8 A. Chris is asking me, Who is going to go
9 with you, or do this? Are you just doing it or
10 who's going with you?"

11 This is where he's giving me all kinds of
12 advice that I should kill my so-called brother
13 afterward, based upon the suspicion that he might
14 tell.

15 Q. And who is Chuco?

16 A. Mandel Parker.

17 Q. And what's the concern about Mandel
18 Parker?

19 A. Like I said, just on the off-chance that
20 he might tell, just kill him. Don't take that
21 chance. That's my brother.

22 Q. That was a directive from Chris Garcia to
23 you?

24 A. Yeah.

25 Q. Let's continue.

1 (Tape played.)

2 Q. Okay. So now this conversation looks like
3 it's focused on Marcantel. Do you know who the
4 Myers is who is referenced here?

5 A. I think he's the deputy secretary.

6 Q. And is Gregg Marcantel -- is he a big guy,
7 as far as you know?

8 A. Yeah, he's a pretty big guy.

9 Q. Let's continue with the recording.

10 (Tape played.)

11 Q. Did he actually live at River's Edge 3?

12 A. I don't remember.

13 Q. So you're just saying you knew where to
14 locate him?

15 A. Yeah.

16 Q. So you could shoot him?

17 A. Yeah. I was just coming up with scenarios
18 in my head like I actually did the legwork, I
19 actually found these people and I had actually
20 planned it out. I'm just telling him stories.

21 Q. So at some point when he's walking his
22 dog, that would be a good chance to shoot him, out
23 in the bosque?

24 A. Right by the river.

25 Q. We're going to get to it here in a bit.

1 "If Chuco doesn't do" -- "I'm going to put one" --
2 "if he starts" -- what would you be talking about
3 there?

4 A. Okay. When they send somebody on a
5 mission in prison, or whatever, give the person the
6 weapon and tell them, "You're doing it." And they
7 wouldn't tell him beforehand. They would tell him
8 right when it's going to happen. And they would
9 also have somebody else there for a backup plan, in
10 case they get cold feet, hit them. The purpose was
11 so they wouldn't know nothing to tell anything until
12 it was going down.

13 So I'm just basically playing along with
14 the standard operating procedure, which is: If
15 Chuco starts backing out or acting shady, then I'll
16 shoot him.

17 Q. Let's continue for a little bit longer
18 here.

19 (Tape played.)

20 Q. Sounds like he says give him a doble
21 reactor?

22 A. Give him a doble right after. A doble is
23 a double dose, pretty much.

24 Q. Who were you supposed to give a double
25 dose to?

1 A. Chuco.

2 Q. Why?

3 A. So he couldn't tell.

4 Q. And what would that --

5 A. That would kill him.

6 Q. And what's this talking about, "or killing
7 Santistevan," on line 11?

8 A. I see the line. But sometimes Chris talks
9 and he says things that don't really make sense.

10 Q. And were you aware that Santistevan was
11 one of the other people who was targeted for murder?

12 A. Yeah. But at this point we were talking
13 about Marcantel the whole time. And then he said
14 Santistevan, or killing Santistevan. I don't know.

15 Q. And your response is: "Give him a double
16 and leave him with everything"?

17 A. Yeah.

18 Q. What are you talking about doing there?

19 A. If Chuco gets cold feet, whatever, give
20 him a doble, do what I had to do. Leave the gun and
21 everything on Chuco. That way, it would bring it on
22 him.

23 Q. Let's continue.

24 (Tape played.)

25 Q. Up above you say, "He doesn't know who it

1 is or nothing"?

2 A. Chuco.

3 Q. Is that true? Had you actually told Chuco
4 what the plan was?

5 A. He knew what the plan was, but everybody
6 kept stressing: Don't tell anybody else. But they
7 were telling everybody else, so everybody knew what
8 was going on. I didn't tell Chuco anything. He
9 didn't know nothing.

10 Q. That's what you said. Is that what really
11 happened?

12 A. No, I told Chuco.

13 Q. And had Chuco agreed to go along with this
14 plan?

15 A. Yeah.

16 Q. Let's continue.

17 (Tape played.)

18 Q. What's a gauge?

19 A. A shotgun.

20 Q. What is he referring to with this bright
21 light?

22 A. He's saying that the guns that he has are
23 too nice to use for this. Better that we sacrifice
24 you with a little .22 without a clip. He's pretty
25 much not saying that, but that's what he's saying.

1 Q. That's what's going on through your head;
2 right?

3 A. That's what's happening. I have some
4 really nice guns, but -- I'll describe them to you,
5 but I'm not going to give them to you.

6 Q. Let's continue.

7 (Tape played.)

8 Q. Okay. Do you know what Pup is supposed to
9 be waiting for when you say, "Yeah, tell Pup to
10 wait," and then "being down for a tenth" is what
11 Garcia says?

12 A. He's down for the 10th. It sounds like a
13 date, like a date or something. But I don't really
14 remember.

15 Q. Okay. Let's continue.

16 (Tape played.)

17 Q. Do you know what he's talking about here,
18 this box of habits, that's what it says, for 80
19 grand?

20 A. First, we're talking about Andrew, a guy
21 that's a snitch. Then I think he's talking about
22 Red. I don't know his name, Red. I think he's
23 talking about him getting out and he has money, is
24 what I'm thinking. But like I said, Chris will talk
25 about one thing, jump to another thing, back and

1 forth. I'm not really paying too much attention to
2 all this stuff. I'm, just, "Yeah, yeah, yeah,
3 okay."

4 Q. Let's continue then.

5 (Tape played.)

6 Q. All right. There is discussion about
7 someone being an MMA fighter?

8 A. That's Red.

9 Q. Do you know who Red is?

10 A. He's a brother, one of the ones who was
11 involved in this case, I think. And I think he was
12 supposed to be telling, or taking the rap, or
13 telling, then taking the rap, or something.

14 Q. Okay. Let's continue.

15 (Tape played.)

16 Q. When he says "Let me" -- when you say,
17 "Let me go put this away, carnal," what are you
18 putting away?

19 A. The weapon.

20 Q. Okay. Let's continue, please.

21 (Tape played.)

22 A. That's Marcantel.

23 Q. So this discussion of seeing somebody at
24 the Barelvas Cafe --

25 A. He's referring to Marcantel.

1 Q. And he says, "That's one that's willing to
2 send Pup out of state"?

3 A. Yeah.

4 Q. Do you know what the discussion is about
5 here?

6 A. That's where the decision to send him out
7 of state had to have come from, the Secretary of
8 Corrections or somebody higher. I think he even
9 said something about, "If it goes to the feds, the
10 decision has to come from Washington." I don't know
11 if that's true or not. That's what he said.

12 Q. And I'm going to ask you, before I play it
13 here, there's a portion of the transcript that talks
14 about, "Those are the three names. He didn't give a
15 fuck which one. One of them three." Do you know
16 what that's talking about?

17 A. Yeah, he's saying he doesn't care which
18 one of them dudes, he doesn't care if it was this
19 guy. He just wanted somebody killed, preferably
20 somebody higher up that made the decision to send
21 him out of state.

22 Q. Once again, before we start, so I can let
23 it run, on lines 14 through 16 there is a discussion
24 of the State and then sending people to the feds?

25 A. Yeah. That's what I've been telling you,

1 that they were hitting all the brothers now. You
2 know, it goes to the State. They send to the
3 feds -- you know what I mean? He's saying that -- I
4 think the point of that is he's saying that if you
5 do that, you're going to end up in a bad place.
6 That's where he's going with this, saying you're
7 going to end up in a prison. I think it's all in
8 the same conversation where he talks about being
9 locked up so long, he's going to forget his own
10 name.

11 Q. Let's continue for a bit then.

12 (Tape played.)

13 Q. Okay. Is this the part you were talking
14 about earlier, about getting hair from the barber
15 shop?

16 A. Yeah, he's saying look for locos, gangster
17 types, and try to get their hair.

18 Q. Rub it on the crime scene?

19 A. Rub it on the gun, and leave it at the
20 crime scene for the DNA for later.

21 Q. Okay. Let's continue.

22 (Tape played.)

23 Q. What's this discussion about another
24 shotgun from his brother?

25 A. He keeps talking about the shotgun. I

1 said, "Give me a shotgun, too."

2 And he said he had to get it later. And
3 I'm trying to get out of there at that point, so
4 I'm, like, "I'll come back. I'll come back. Let me
5 go get rid of this, go put it away or something."

6 Q. Let's continue.

7 (Tape played.)

8 Q. What's this discussion about not talking
9 on the phone anymore?

10 A. He's saying that they think it's secure
11 because they're talking on a cellphone and it ain't
12 the prison phone. Pup is saying all they got to do
13 is intercept the signal. They can park a truck or
14 electric -- electronic device that can capture the
15 signal before it even reaches the tower and hear it
16 before you're even hearing it, basically.

17 Q. So why the need to quit talking on the
18 phone there?

19 A. Because it could be being recorded.

20 Q. Let's continue.

21 (Tape played.)

22 Q. What's the discussion about tearing him
23 apart and the mattresses off the wall and
24 everything?

25 A. They're going to shake down the prison.

1 They're going to look for every scrap of
2 information. Look at the investigation they did for
3 Molina. Imagine what they'll do for this guy.
4 They're going to tear everybody apart. They're
5 going to shake down everybody. They're going to hit
6 every connection, and they're going to turn over
7 every stone, looking for information.

8 Q. The discussion, then, that if this goes
9 down that --

10 A. Calentura.

11 Q. They're going to bring the heat.

12 Okay. Let's bring the next portion, then.

13 (Tape played.)

14 Q. What is this discussion about regarding
15 Chuco?

16 A. You don't take any chances with him, kill
17 him. Fucked up, kill him.

18 Q. What are you supposed to do with the
19 weapon?

20 A. Leave it on him.

21 Q. Okay. Let's continue.

22 (Tape played.)

23 Q. What is this talk about 5 ounces?

24 A. Talking about somebody offered a rifle
25 with a silencer on it, and they wanted 5 ounces for

1 it and he was saying it wasn't really worth it.

2 Q. Five ounces of what?

3 A. Heroin or cocaine; 5 ounces of drugs,
4 probably heroin.

5 Q. And you also mention up above about going
6 to check on that gauge. Do you remember that part?

7 A. He was telling me the gauge was at his
8 brother's house and he had to go get it, or
9 something.

10 Q. Okay. Let's continue.

11 (Tape played.)

12 Q. Do you know what the discussion about
13 Hansel is about?

14 A. I don't know anybody named Hansel.

15 Q. Then at the very end, you say, "Hey, it's
16 a done deal. Wait a couple minutes, give me a call,
17 tell me where to meet you."

18 Are you talking to Chris Garcia or someone
19 else at that point?

20 A. I'm talking to the agents.

21 Q. When you tell them it's a done deal, what
22 are you communicating to them?

23 A. I have the weapon; I'm just trying to get
24 away from the house so nobody sees me pull over or
25 something.

1 Q. Now, I asked you about the drug sale on
2 September 11 of 2015. Did you plead guilty to that
3 charge?

4 A. Yeah.

5 MR. CASTELLANO: Your Honor, at this time
6 I move the admission of Government's Exhibits 759,
7 684 and 685. I'll show it to defense counsel.

8 THE COURT: All right. Any objection from
9 the defendants?

10 MR. LOWRY: No, Your Honor.

11 THE COURT: Not hearing any, Government's
12 Exhibits 759, 684, and 685 will be admitted into
13 evidence.

14 (Government Exhibits 684, 685, and 759
15 admitted.)

16 BY MR. CASTELLANO:

17 Q. Okay. Mr. Montoya, I'm going to begin by
18 showing you Government's Exhibit 759. What is that
19 document?

20 A. I think it's a copy of the complaint or
21 the plea bargain.

22 Q. Is that the charge you pled guilty to,
23 which was distribution of heroin?

24 A. Yes.

25 Q. You see the date circled here on December

1 18 of 2015?

2 A. Yes.

3 Q. So do you remember that after your
4 cooperation in this case, that you pled guilty to
5 the charge?

6 A. Yes.

7 Q. I'm now going to show you Government's
8 Exhibit 684. Do you know what that document is?

9 A. That's the plea agreement.

10 Q. If you know, do you know why it was
11 sealed? Do you see where it says "Sealed plea
12 agreement" up above?

13 A. I think it was sealed to conceal my
14 involvement in this case until now -- well, until as
15 long as possible, I guess.

16 Q. So in other words, was your -- was this to
17 protect you from letting people know that you had
18 pled guilty and cooperated?

19 A. Yes.

20 Q. Let me turn your attention to the next
21 page, page 2. Did you understand that the
22 distribution of heroin charge carried a maximum
23 penalty of up to 20 years?

24 A. Yes.

25 Q. And turning to page 3, do you see the

1 redacted portion here I'm circling?

2 A. Yes.

3 Q. Did you understand at the time of your
4 plea that you admitted to facts explaining why you
5 were guilty of the offense?

6 A. Yes.

7 Q. But rather than the jury just taking it
8 from the paper, did you then testify to explain why
9 you were guilty of distributing heroin?

10 A. Yes.

11 Q. Okay. Let me turn your attention now to
12 Government's Exhibit 685. Do you recognize that
13 document?

14 A. Yeah.

15 Q. What is it, as best as you understand it?

16 A. It means I cooperate fully, tell the
17 truth, and not make anything bigger or smaller than
18 they were in this case or in any other case to the
19 best of my ability.

20 Q. And turning to the second page of that
21 document, do you understand that the United States
22 Attorney's Office can make a motion on your behalf
23 to possibly lower your sentence?

24 A. Yes.

25 Q. And do you understand that ultimately the

1 judge has the final discretion about what your
2 sentence will be?

3 A. Yes.

4 Q. Now, underneath here there is a different
5 name, Assistant U.S. Attorney Shana Long. Was she
6 the original prosecutor on your drug case?

7 A. Yeah, I believe so.

8 Q. I want to ask you about another
9 conversation you had involving Jerry Armenta's
10 family. Do you remember that?

11 A. I remember it vaguely. A lot of this
12 stuff I didn't remember until I reviewed the
13 conversations and the transcripts and stuff.

14 Q. What did you remember about having a
15 conversation with somebody about Jerry Armenta's
16 family?

17 A. The gist of the conversation was that he
18 was telling, or that he was suspected of telling, or
19 they suspected him or something. They wanted me to
20 go to his house and let it be known that we knew
21 where they lived.

22 Q. Who is "they"?

23 A. His family.

24 Q. And who wanted you to do this?

25 A. Pup.

1 Q. And basically, what did he ask you to do?

2 A. Go let them know that he's -- pretty much
3 get him not to tell. If he's planning on telling,
4 let his family know, and tell him that's probably
5 not a good idea, or they probably wouldn't be safe
6 if he did.

7 Q. And in terms of being safe, without
8 telling us which facility you were in, had you been
9 housed near somebody named Edward Troup?

10 A. Recently?

11 Q. Yes.

12 A. Yeah.

13 Q. And can you tell the jury about the
14 comments Edward Troup said in your presence?

15 A. He just said that -- he was talking to
16 somebody, I don't know who -- but he was yelling out
17 that all of us cooperators think that the FBI and
18 the US Government is our friend, but we're going to
19 find out in the end that, as soon as they're done
20 prosecuting these guys, they're going to line us up
21 and prosecute us next; that we're probably going to
22 end up with more time than them, and stuff like
23 that.

24 Q. What did you take that to mean, when he
25 said that where you could hear it?

1 A. I thought he was just trying to plant the
2 seed in my head, seed of doubt to come here today
3 and cooperate. But I gave my word. And also, this
4 is more than just all the other benefits that you
5 mentioned earlier. It's about burning deep bridges
6 for me. It's done. I'm not that same person. And
7 I'm making sure that I can never go back there.

8 Q. And approximately how long ago was it that
9 Edward Troup said this to you?

10 A. Oh, a couple weeks, maybe. He didn't say
11 it to me. He said it around the tier, for me and a
12 few other people's benefit, I believe.

13 Q. Do you remember who else was housed with
14 you at that facility in terms of people who are
15 cooperating?

16 A. Benjamin Clark, Jerry Montoya. I think
17 Marijuano might have been there, I'm not sure.

18 Q. Did he state that loud enough for you to
19 hear it?

20 A. Loud enough for the whole tier, yeah.

21 Q. Now, in terms of the benefits in this
22 case --

23 MS. JACKS: Excuse me, Your Honor. May I
24 interrupt just a minute? With respect to the
25 alleged conversation that we just heard about this

1 witness and Mr. Baca, isn't that subject to the
2 limiting instruction?

3 MR. LOWRY: It wasn't Mr. Baca.

4 THE COURT: I guess I don't think it does.

5 MS. JACKS: The one before, I'm sorry. I
6 didn't interrupt Mr. Castellano quick enough.

7 MR. CASTELLANO: Regarding Mr. Armenta,
8 Your Honor.

9 THE COURT: Okay. The Armenta one does.
10 So it's limited to Mr. Baca. But this latest
11 statement by Mr. Troup is not. So break that out.
12 If you're taking notes, make sure that you specify
13 that the Armenta conversation can only be used in
14 the discussions with Mr. Baca's charges, and not as
15 to the other three gentlemen.

16 BY MR. CASTELLANO:

17 Q. Can you tell the members of the jury
18 whether Mr. Troup is a defendant in the SNM overall
19 investigation?

20 A. I think he is. I haven't seen the
21 paperwork. I haven't seen who exactly defendants
22 are. I haven't seen none of the discovery. I think
23 he is.

24 Q. Do you know him to be an SNM member?

25 A. Yeah.

1 THE COURT: Mr. Castellano, would this be
2 a good time for us to take our lunch break?

3 MR. CASTELLANO: Yes, sir.

4 THE COURT: All right. We'll be in recess
5 for about an hour. All rise.

6 (The jury left the courtroom.)

7 THE COURT: All right. We'll be in recess
8 for about an hour.

9 (The Court stood in recess.)

10 THE COURT: Let's go on the record before
11 the jury comes in. I wanted to ask a couple of
12 questions as I consider the Government's request for
13 this 304 and 305. I guess my questions are to you,
14 Mr. Beck, and also Mr. Lowry. Looking at the timing
15 of the murder, was Mr. Baca the leader of SNM at the
16 time of the murder?

17 MR. BECK: No. He was not a leader of the
18 SNM at the time of the murder. He was just an SNM
19 soldier at the time of the murder.

20 THE COURT: Okay. And was he a leader
21 before he went to Colorado, or only when he got back
22 from Colorado?

23 MR. BECK: I believe he would have been a
24 leader before he went to Colorado.

25 THE COURT: And what year did he go to

1 Colorado?

2 MR. BECK: I don't have that in front of
3 me.

4 THE COURT: Mr. Lowry, do you have
5 anything, Ms. Duncan, on this?

6 MR. LOWRY: Your Honor, okay, I just want
7 to make sure we're all comparing apples to apples
8 here. Mr. Baca, after the Molina murder in 2014,
9 was transferred out of state to Arizona; and then
10 from Arizona, was transferred to Florence, Colorado,
11 and came back in October 2015.

12 But if I understand the timeframe
13 correctly, Mr. Beck is talking about the 1989 murder
14 conviction. And Mr. Baca remained in New Mexico
15 till approximately 1998, when he was shipped out to
16 Nevada for a decade.

17 THE COURT: Okay. I just wanted to have
18 that timeframe in mind as I consider the request.

19 MR. LOWRY: Sure. And I think he was gone
20 from approximately late '97, '98.

21 THE DEFENDANT: '98.

22 MR. LOWRY: That's what I thought; it was
23 that decade he was gone.

24 THE DEFENDANT: I was out of the state '93
25 to '95.

1 MR. LOWRY: To Illinois.

2 THE COURT: All right. I just wanted this
3 to think about. All rise.

4 (The jury entered the courtroom.)

5 THE COURT: All right. Everyone be
6 seated.

7 All right, Mr. Montoya. If you'll come up
8 and resume your place in the witness box, and I'll
9 remind you that you're still under oath.

10 THE WITNESS: Yes, sir.

11 THE COURT: Mr. Castellano, if you wish to
12 continue your direct examination, you may do so at
13 this time.

14 MR. CASTELLANO: Thank you, Your Honor.

15 THE COURT: Mr. Castellano.

16 BY MR. CASTELLANO:

17 Q. Mr. Montoya, going back to some of the
18 benefits you received, did you receive money to
19 repair an RV?

20 A. Yes, I did.

21 Q. And what was the purpose of repairing your
22 RV?

23 A. The master brake cylinder went out.

24 Q. Why did you need to repair that vehicle?

25 A. I was going to use that vehicle to

1 relocate.

2 Q. And did you, in fact, relocate after your
3 guilty plea on December 18?

4 A. I ended up leaving town on Christmas Eve.

5 Q. Of 2015?

6 A. Yes.

7 Q. Why did you leave town?

8 A. Because the arrests were imminent or had
9 already taken place, and it wouldn't be long for
10 them to figure out that I was cooperating in the
11 case and I would be killed.

12 Q. All right. Did you therefore then move
13 out of state?

14 A. Yes.

15 Q. I want to ask you if you know the
16 defendant Daniel Sanchez.

17 A. Yes.

18 Q. Do you see him in the courtroom?

19 A. Yes.

20 Q. Where is he?

21 A. Right there.

22 Q. What's he wearing?

23 A. Blue suit.

24 Q. How do you know him?

25 A. He used to be one of my best friends.

1 Q. And what can you tell us about how he got
2 in the SNM?

3 A. He was from Belen. He used to hang around
4 with gangs, the guys from Albuquerque. One of the
5 Burquenos was stabbed in his park and the rest of
6 them didn't really stand up for him. He already
7 hung out with us a lot anyway. One day, me and
8 Arturo and Chero were around the prison yard
9 talking, sitting in the gym. And we didn't mean for
10 it to happen like that. We just told him, yes or
11 no.

12 Yeah, si mon, what?

13 We told him, "You just sold your soul to
14 the SNM?"

15 He said, "I'm down." So we brought him
16 in, we voted him.

17 Q. So you're actually one of the people who
18 brought Daniel Sanchez into the SNM?

19 A. Yeah. It was me, Arturo, and Alfred
20 Garcia, Chero.

21 Q. Do you remember about when that was?

22 A. Somewhere between '95 and the time we went
23 to Virginia.

24 Q. So what years would that be?

25 A. Between '95 and, I want to say, '99, '98

1 or '99.

2 Q. Why do you think it was after 1995?

3 A. It was after the murder of Max Gutierrez
4 at the Main facility in '95. It was after that, and
5 it was before we went to Virginia.

6 Q. Who was Max Gutierrez?

7 A. Max Gutierrez was a guy from San Jose Gang
8 in Albuquerque. He used to get a lot of dope.
9 Leroy Torrez wanted to bring him in, but he was not
10 SNM-quality material. He was not aggressive in any
11 way. He would not -- Junior wanted to bring him in
12 just for the dope, and it would cause a problem
13 later, because when Junior wasn't there to take care
14 of him, what ended up happening happened. You know,
15 he was killed because he later said that he no
16 longer wanted to be part of SNM. And at that time,
17 you couldn't -- you can't walk away. Like blood-in
18 blood-out type thing.

19 Q. And so was Max Gutierrez an SNM member at
20 least for a short time?

21 A. Yes.

22 Q. And did the SNM kill him?

23 A. Yes.

24 Q. And then you gave us a timeframe for when
25 you think Daniel Sanchez came in. Approximately

1 when did you go to Virginia?

2 A. It was around the time that that officer
3 was killed in Santa Rosa by the LC prison gang.
4 They sent a bunch of them out to Virginia. And we
5 got locked up just prior to that. So it had to have
6 been before that officer was killed and after Max
7 was killed.

8 Q. And did a group of you get sent to
9 Virginia?

10 A. Yeah.

11 Q. And was that -- is that sort of a prisoner
12 exchange program, or why were you sent out there?

13 A. Like I said, the LCers killed an officer
14 in Santa Rosa. And at first, they shipped a lot of
15 them out there. And little by little, they brought
16 them all back, and replaced them with SNM Gang
17 members, mostly.

18 Q. And when you were transferred out to
19 Virginia, was Daniel Sanchez one of the people who
20 was transferred out with you?

21 A. Not on the same transport, but yeah.

22 MR. CASTELLANO: I pass the witness, Your
23 Honor.

24 THE COURT: All right. Thank you, Mr.
25 Castellano.

1 Who would like to go first? Mr. Lowry?

2 MR. LOWRY: Thank you, Your Honor.

3 THE COURT: Mr. Lowry.

4 MR. LOWRY: May it please the Court?

5 THE COURT: Mr. Lowry.

6 CROSS-EXAMINATION

7 BY MR. LOWRY:

8 Q. Good afternoon, Mr. Montoya.

9 A. Good afternoon, Mr. Lowry.

10 Q. You made the comment on direct examination
11 that you needed to burn a deep bridge with the SNM.
12 That's right?

13 A. I don't recall it being a deep bridge, but
14 I needed to burn a bridge with the SNM, yes.

15 Q. And according to your testimony, it was
16 getting busted in September of 2015 that gave you
17 that epiphany?

18 A. No. Actually what gave me the epiphany is
19 watching people get murdered, both people that,
20 according to the gang and my mentality, at the time
21 deserved it and people that I didn't think deserved
22 it, probably didn't deserve it. A combination of
23 that. My daughter being born. Me starting to get
24 over my addiction. There was a number of things.

25 Q. But my question is: You could have walked

1 away in August of 2015?

2 A. I could have never walked away without
3 being killed or without cooperating or something,
4 something drastic.

5 Q. You don't think you could have moved to a
6 different state?

7 A. Maybe I could have at that time.

8 Q. Okay. And you could have done that in
9 August of 2015?

10 A. Maybe I could have, okay.

11 Q. You could have done that in July?

12 A. Yeah.

13 Q. Or even June?

14 A. Maybe.

15 Q. Well, you could have if you had wanted to;
16 correct?

17 A. If I had been thinking that way, maybe.

18 Q. But you weren't thinking that way until
19 you were arrested in September?

20 A. I was thinking about getting away from
21 them. I just didn't have the idea of leaving New
22 Mexico. I never thought of that. I don't have a
23 family anywhere else. I didn't have the motivation
24 to leave my family, everything I know, behind just
25 to get rid of this one thing, which it was well

1 worth it.

2 Q. But you ended up doing that anyway?

3 A. Yes, did, and I consider it well worth it.

4 Q. Right. And there was nothing to stop you
5 from doing that earlier?

6 A. Nothing stopping me but myself.

7 Q. So let's talk about the benefits that you
8 got that encouraged you to move, okay? And you
9 talked of them briefly just before the end of your
10 direct. But if I understand the benefits correctly,
11 once you decided to cooperate after you were
12 arrested, the United States decided to send you to
13 professional driving school?

14 A. Yes.

15 Q. So you could get your commercial driver's
16 license?

17 A. Yes.

18 Q. And actually --

19 A. It was my suggestion. I asked for that
20 school.

21 Q. And they helped you out with that?

22 A. Yes.

23 Q. To give you a career, or at least a
24 vocation that you could start?

25 A. Give me an opportunity to sink or swim, to

1 make it on my own or not.

2 Q. And they actually gave you a nice stipend,
3 \$5,000, for your work in October, November?

4 A. It wasn't for my work. It was to
5 relocate. It was for rent and expenses until I
6 found a job and got on my feet.

7 Q. So do you remember signing the receipt?

8 A. Yeah, I was specifically told that it
9 was -- I couldn't take cash for being an informant,
10 that I'm working. I already had a case pending that
11 they couldn't pay me to be an informant; that they
12 were going to help me relocate, to keep my family
13 safe, and myself.

14 MR. LOWRY: May I approach, Your Honor?

15 THE COURT: You may.

16 A. Yes.

17 BY MR. LOWRY:

18 Q. So did that refresh your recollection that
19 that money was for your work and to help you move
20 out of state?

21 A. It says to help me move out of state. It
22 says that I participated in a case. That's what the
23 case was; that's what I did; and that the money was
24 paid for helping me move out of state. That's the
25 way I understand it. If you want to put it up for

1 the jury to see it and let them decide.

2 Q. Sure. But --

3 A. I don't really understand that much about
4 it.

5 Q. But it also says that you deserved the
6 money because you utilized a cellphone and
7 consensual wiretap for 60 days.

8 A. I said that I did all that. I didn't say
9 I deserved it for that. I said I did all that. And
10 I was given the money. It doesn't matter. You can
11 show it to them. But I don't see the word
12 "deserving" there anywhere.

13 Q. Sure. Well, the United States typically
14 doesn't hand out money for free.

15 A. No. But they do help people relocate that
16 have helped. It doesn't matter. It couldn't say I
17 was paid. It doesn't matter. They gave me \$5,000,
18 and I used it to move out of state. They gave it to
19 me and I accepted it.

20 Q. Sure. And you used that money to buy the
21 RV?

22 A. No.

23 Q. Then did you use it for -- why did you
24 need vehicle repairs shortly thereafter?

25 A. I needed vehicle repairs before. There

1 was two different vehicle repairs that are
2 referenced in there. One of them was before I left,
3 to fix the master cylinder on the RV. And the other
4 one was for vehicle repairs, after I had already
5 been living out of state for a while. The money was
6 used -- is that what you were asking, what the money
7 was used for?

8 Q. No, I just wondered if you bought the RV
9 with the \$5,000, and then if you used it all, if it
10 needed still to get it repaired.

11 A. No, he helped me with the repairs.

12 Q. Now, I want to talk to you about your
13 arrest in September. You were actually set up and
14 some informants did controlled buys from you.

15 A. I believe it was one informant.

16 Q. Did a controlled buy from you for heroin
17 on September 4?

18 A. Yes.

19 Q. And bought a small quality of heroin?

20 A. I think it was September 11, they said.
21 I'm not sure.

22 Q. Well, that would be the second day.

23 A. I didn't really keep track of the dates
24 and stuff. I'm not very good at that stuff.

25 Q. And I noticed that on your direct

1 testimony that you have -- dates aren't necessarily
2 a good -- easy -- come easy to you?

3 A. Yeah.

4 Q. Is that right?

5 A. I would say that's right. Years of drug
6 use and stuff, yeah.

7 Q. The years of drug use don't do very good
8 things to your memory?

9 A. No. They don't change them, though.

10 Q. Well, you testified to the jury that the
11 last time you got out of prison was 2012, on direct,
12 but --

13 A. Could not have been. I've been in and out
14 of prison so many times that they all run together.

15 Q. Right. And so if your prison records
16 indicated that the last time you got out of the
17 prison was 2014, would you dispute that?

18 A. I wouldn't. I would say the prison
19 records are more accurate than my memory.

20 Q. So with regard to getting busted in the
21 fall of 2015, initially you sold some heroin to an
22 undercover officer?

23 A. Not an undercover officer.

24 Q. A confidential informant?

25 A. Yes.

1 Q. And they came back to do another purchase
2 on the 11th?

3 A. Yes.

4 Q. And on the 11th, that's when you told the
5 jury that you didn't trust this guy; right? You
6 thought he might have been an informant from the
7 get-go?

8 A. I knew he was a snitch from way back in
9 the day. I knew he was. But I still sold to him.

10 Q. So he wanted to buy drugs, I believe you
11 said cocaine?

12 A. Heroin.

13 Q. Heroin. And you cut it significantly to
14 reduce the potency?

15 A. Just because I didn't have -- I'm real
16 conflicted about this part of me, this program that
17 I lived my life that way for so many years. So
18 understand that -- okay, so at this point, I'm
19 looking at him as a snitch. I don't really care.
20 I'm burning him. I'm keeping his money and I'm
21 selling him junk. That's what I'm doing.

22 Q. But if you knew he was a snitch, why would
23 you go through with the sale and get busted?

24 A. I didn't think he was snitching. I
25 actually asked him, "Are you working off charges or

1 something? And if you are, go somewhere else."

2 And I still sold to him. It's a chance, a
3 stupid, stupid chance.

4 Q. But you sold more than heroin to him,
5 didn't you?

6 A. Yeah.

7 Q. You actually sold him a .38 Taurus
8 revolver?

9 A. Yeah.

10 Q. And at the time you were a felon?

11 A. Yes.

12 Q. And you sold a firearm in the context of a
13 drug deal?

14 A. Yes.

15 Q. And you were arrested for both?

16 A. Yes.

17 Q. But the information -- and could we see
18 Government's Exhibit 759, please. This is the
19 sealed plea agreement. Pardon me, I wanted the
20 information.

21 Now, this is the information you pled
22 guilty to; correct?

23 A. That's right.

24 Q. And there is no mention of a firearm in
25 that?

1 A. I think that's why they call them plea
2 bargains; right.

3 Q. That's my point. It was quite a bargain,
4 wasn't it?

5 A. I never seen anybody plead guilty to
6 everything they were charged with. I think a plea
7 bargain means drop some charges and plead guilty to
8 some charges. That's why it's a bargain.

9 Q. And it was really a bargain for you in
10 this case because the gun charge would have been a
11 five-year mandatory minimum sentence under 18 USC
12 924(c).

13 A. Well, I pleaded guilty to 20.

14 MR. CASTELLANO: Objection, that's a
15 misstatement of the law, Your Honor.

16 THE COURT: I'll let you work with it on
17 redirect.

18 MR. CASTELLANO: Your Honor, the witness
19 doesn't know the answer to that question.

20 THE COURT: Well, he may not. But if he
21 does --

22 BY MR. LOWRY:

23 Q. Did you understand that the firearm
24 carried mandatory minimum penalties?

25 A. I did.

1 Q. You did.

2 A. But I can tell you five years -- I pleaded
3 guilty to a charge that carries 20, so --

4 Q. Well, it carries 20 in theory; right?

5 A. From what I understand, it's up to the
6 judge who can give me anywhere from one to 20.

7 Q. Well, the judge could give you probation,
8 if the United States, in the addendum to your plea
9 agreement, filed a motion under the 5K agreement to
10 give you a substantial reduction; correct?

11 A. I understand that's a possibility.

12 Q. Right. And did anybody explain to you the
13 United States sentencing guidelines?

14 A. I think I understood them pretty well
15 before, but I think they're only suggestions now,
16 before they used to be mandatory and I think now
17 it's just a suggestion, a guideline.

18 Q. So you understood, then -- it sounds like
19 you studied quite a bit when you entered this plea.
20 Then you would have understood that when you pled
21 guilty, you pled guilty to distributing not the full
22 amount of the heroin you sold to the confidential
23 source, either. You pled guilty to selling only 7.6
24 grams.

25 A. From what I understand, it's the amount of

1 actual drugs, unless there's a mixture of drugs. I
2 don't really understand it fully. It's complicated.

3 Q. If you look at your plea agreement, at
4 Government 684, it says you pled to distributing 7.6
5 grams of heroin.

6 A. I think that's the total amount of heroin
7 that was in the mixture. I don't think I got
8 charged for the sugar.

9 MR. LOWRY: May I approach, Your Honor?

10 THE COURT: You may.

11 A. That was two separate buys. One of them
12 was 1.5 grams, the other one was 7 --

13 BY MR. LOWRY:

14 Q. 7.6 grams.

15 A. Yeah.

16 Q. And you'd sold roughly .4 grams on the 4th
17 of September -- or .7 grams, pardon me?

18 A. You have the paperwork. I don't remember.

19 Q. Would you like to see it to refresh your
20 recollection?

21 A. If it says that on the paperwork, I would
22 agree.

23 Q. So part of your plea agreement, then, you
24 didn't even have to plead to all of the drugs that
25 you sold?

1 A. I think that's the way a plea bargain
2 works.

3 Q. Right. And that's my point: It was a
4 bargain.

5 A. It was a bargain. I'm not going to say
6 it's not. It was a very good bargain. Most people
7 get good bargains.

8 Q. And that led you, under the terms of your
9 plea agreement, as you put it, you joined Team
10 America.

11 A. I joined Team America.

12 Q. And you agreed, under the addendum to the
13 plea bargain, to testify truthfully in your case
14 about all of your criminal conduct.

15 A. Yeah.

16 Q. Okay.

17 A. To the best of my memory and ability.

18 Q. So the bargain that you cut got you out of
19 the racketeering case with the SNM?

20 A. I'll be out of everything in my past,
21 pretty much.

22 Q. Right.

23 A. This way -- this is my opportunity to come
24 clean to stuff that I wasn't even under
25 investigation for, may not have been suspected of,

1 just to get it out -- I don't have to look over my
2 shoulder.

3 Q. Right. But your opportunity to come clean
4 unfortunately wasn't as successful as one would have
5 hoped.

6 A. I was very successful coming clean. If
7 you're talking about, was I able to be a perfect
8 citizen? No. It took me 20 years to become not
9 even a perfect gangster. And it's going to take me
10 a while to be a little bit better husband and
11 father.

12 Q. And you had a slip last October, when you
13 were arrested for stealing a motor vehicle?

14 A. I was arrested for auto theft.

15 Q. Right. Because you were in a different
16 state and an F-350 caught your eye?

17 A. No, I was pulled over in my own vehicle
18 and someone else said that I was actually in an
19 F-250 that belonged to me, and another vehicle was
20 stolen. My vehicle was in the same place at the
21 same time that the other vehicle was being stolen.

22 Q. Right. And the security video for the
23 hotel showed you getting in the stolen vehicle.

24 MR. CASTELLANO: Objection, relevance.

25 THE COURT: Overruled.

1 A. No.

2 BY MR. LOWRY:

3 Q. It didn't?

4 A. No. It shows my vehicle pull up next to
5 the vehicle that was stolen. It shows the two
6 vehicles drive off.

7 Q. And that was -- the police officer who
8 arrested you looked at that video after you were
9 pulled over; right?

10 A. Yeah, I was pulled over five minutes after
11 in my own vehicle.

12 Q. And you told the police officer, when he
13 pulled you over, that you couldn't have been near
14 that hotel because you were driving the back roads?

15 A. Yeah.

16 MR. CASTELLANO: I object to relevance at
17 this point, and this is getting close to his Fifth
18 Amendment privileges.

19 THE COURT: Overruled. He has counsel
20 here, if he needs to invoke it.

21 MR. CANDELARIA: Your Honor, in that case,
22 I will invoke his Fifth Amendment rights.

23 THE COURT: All right. Why don't you come
24 up and sit next to him, so you can advise him fully
25 of his rights?

1 A. I will say that I've been in --

2 THE COURT: Hold on, Mr. Montoya. Let's
3 get Mr. Candelaria.

4 This is Dennis Candelaria, Mr. Montoya's
5 lawyer. Get him a chair here.

6 A. Without getting into the facts of the
7 case --

8 THE COURT: Hold on, Mr. Montoya. Let's
9 let Mr. Candelaria get positioned.

10 (A discussion was held off the record.)

11 THE COURT: Why don't you restate your
12 question, Mr. Lowry, if you continue to want to ask
13 it.

14 And then Mr. Montoya, why don't you pause
15 and let Mr. Candelaria advise you, and then you
16 could tell me whether you want to follow his advice.

17 THE WITNESS: Yes, sir.

18 THE COURT: All right. Mr. Lowry.

19 BY MR. LOWRY:

20 Q. Mr. Montoya, I'm going to show you a copy
21 of what has been entered into evidence as
22 Government's Exhibit 685. And this is part of the
23 addendum to your plea agreement. Are you familiar
24 with this agreement?

25 A. Yes.

1 Q. And then you're familiar with the language
2 in paragraph 2 of this agreement?

3 A. Yes.

4 Q. And if I'm reading this correctly, it
5 says, "The defendant hereby agrees to cooperate with
6 the United States by giving truthful and complete
7 information and/or testimony concerning the
8 defendant's participation in and knowledge of
9 criminal activities."

10 A. Yes.

11 Q. And that's not written in the past tense,
12 is it?

13 MR. CASTELLANO: I'll object, Your Honor.
14 He can't use his Fifth Amendment right against him
15 under the terms of that agreement.

16 THE COURT: Well, I'll let him answer this
17 yes or no. And if Mr. Candelaria --

18 A. I believe that it pertained to anything
19 prior to --

20 THE COURT: Hold on a second, Mr. Montoya.
21 If Mr. Candelaria doesn't have any problems, I am
22 going to allow the answer, but --

23 A. Restate the question.

24 BY MR. LOWRY:

25 Q. Sure. You agreed -- as part of your plea

1 agreement, the bargain that you got, right -- and
2 you agree with me you got a bargain?

3 A. Yes.

4 Q. And you agree with me that you could, up
5 to the judge's discretion and depending on whether
6 the folks at this table decide to file a motion
7 under 5K of the sentencing guidelines, the judge, in
8 theory, could give you probation?

9 A. Yes.

10 Q. But to get there, you had to sign this
11 agreement that said you will give truthful and
12 complete information and/or testimony concerning
13 your criminal activities.

14 A. I believe it pertained to past criminal
15 activities, not into the future. Because who knows
16 what you're going to do tomorrow? Do you know what
17 you're going to do tomorrow?

18 Q. Yes, I'll be here.

19 A. You know that for sure?

20 Q. But that was a bargain you struck with the
21 United States. They didn't want you to turn bad the
22 day after you signed that, did they?

23 A. I don't believe they wanted me to turn bad
24 ever again. And I believe everybody here got the
25 same opportunity to take the same plea bargain.

1 Q. That's not my question. My question is:
2 They didn't expect you to sign this and then go out
3 and commit other crimes?

4 A. I expected to be arrested for another
5 crime.

6 Q. You did?

7 A. I was arrested, but I have not been
8 convicted.

9 Q. And I'm not asking you if you've been
10 convicted. All I asked you was: Were you honest
11 with the police officer that pulled you over?

12 A. Was I honest with the -- partially, yeah.
13 It wasn't complete, but yeah. Yeah, I was honest
14 with him. Actually, I was driving on dirt roads.

15 Q. Do you remember telling the police officer
16 that you couldn't have stolen that car because you
17 didn't go anywhere near that hotel?

18 A. Yeah, I told him I wasn't near that hotel.

19 Q. In fact, you told him, "We weren't over
20 there. We were driving down dirt roads."

21 A. Yeah, but we were -- yeah, I told him
22 that.

23 Q. But you actually pulled into the parking
24 lot and pulled up beside the car that was stolen.

25 A. Yeah.

1 Q. And you left your girlfriend to drive your
2 car while you drove the other car away.

3 A. No.

4 Q. You're aware that there is a police report
5 that --

6 A. I'm aware that the police report said that
7 I was pulled over five minutes after this car was
8 stolen, and I was driving my own vehicle, with my
9 girlfriend inside it with me.

10 Q. Right. And your girlfriend took the
11 police to the vehicle you stole.

12 A. Took them to a vehicle. I don't really
13 know what happened, really, to tell you the truth.
14 I haven't seen that discovery. I've been charged
15 with the crime, but I haven't seen the discovery. I
16 haven't seen the information.

17 MR. LOWRY: May I approach, Your Honor?

18 THE COURT: You may.

19 A. Okay. This is a police report. I don't
20 feel comfortable talking about it. I'd like to take
21 the Fifth on the advice of my attorney. But you
22 have the report.

23 BY MR. LOWRY:

24 Q. Okay. I didn't ask you a question.

25 MR. LOWRY: May I approach?

1 A. I just don't feel comfortable talking
2 about any of it. I can tell you that I was arrested
3 five minutes after the incident in my own vehicle.

4 Q. And at the time of your arrest you had an
5 outstanding warrant from the US Marshal Service --

6 A. Yes.

7 Q. -- for the District of New Mexico?

8 A. Yes.

9 Q. Because you had stopped communicating with
10 Special Agent Bryan Acee regarding your supervised
11 release?

12 A. Yeah, I hadn't made contact with him in a
13 month or so, maybe longer.

14 Q. Despite Mr. Acee's best efforts to get in
15 touch with you.

16 A. At that time, I was in an accident at
17 work. My license was suspended, I was unable to
18 work, my cellphone was disconnected. This is my
19 first try at an honest lifestyle. And I was in a
20 downward spiral. I'm not even going to lie about
21 it. This was my first time trying to even have a
22 job. And I did good for two years, and I messed up,
23 and I didn't report.

24 Q. But there was plenty of opportunities to
25 reach out.

1 A. There was. It was my fault completely.
2 Had I stayed in contact, I would be walking in them
3 doors there, rather than being in this suit right
4 here. So I did myself no favors.

5 Q. But you're still looking to get the
6 benefit?

7 A. I'm hoping.

8 Q. You had mentioned on your direct
9 examination sort of your -- I guess how the SNM had
10 changed over the years. Did I understand that
11 correctly? And you'd said that there were a lot of
12 people -- and I don't want to put words in your
13 mouth, but I wrote it down -- there were a lot of
14 people in the hole because people dropped kites on
15 them or something to that effect.

16 A. Yes.

17 Q. What did you mean by that?

18 A. I mean it turned into a popularity
19 contest. Whoever could talk better, whoever could
20 come up with the best story, whoever could
21 manipulate better. And if somebody felt threatened
22 by somebody else or somebody had dirt on somebody
23 else, all they had to do was write a letter to STIU
24 or give them information, however they passed
25 information, and they could get anybody they wanted

1 locked up.

2 So half the guys who were following the
3 rules and being loyal to the gang were locked up for
4 half the guys that were out there getting high and
5 cruising around and eating ice cream. We seen them
6 through the window. It was flawed thinking to get
7 into the gang in the first place, and it was even
8 worse to sit there and watch it unfold while you're
9 locked up constantly.

10 Q. And this is what you described as the
11 honor among thieves. I mean, at least within the
12 original underpinnings of the gang, there was a bit
13 of morals of the gang?

14 A. Morals of the gang, yes.

15 Q. And you guys looked out for each other?

16 A. We're supposed to.

17 Q. But you sincerely did, to protect each
18 other.

19 A. Yes, I did.

20 Q. And you saw that disintegrate over the
21 years?

22 A. I saw that turning into a popularity
23 contest. I always compared it to Big Brother Pinta
24 Edition, Survivor Pinta Edition. Whoever got the
25 dope, that's the immunity item.

1 Q. That's what you meant by -- it really
2 grated your nerves to see the drug dealers kiting
3 people out that were probably --

4 A. Not necessarily drug dealers. Just
5 anybody. Just anybody. If they wanted to get at
6 your girl, they'll kite you out. You can only call
7 once a week. And then they'll call your girl and
8 say, "Oh, yeah, he's no good, he's PC'd. He's a
9 piece of crap."

10 Q. What did you mean when you testified to
11 this jury that, in terms of sort of trying to clean
12 house or reorganize the SNM, you said --

13 A. Every time somebody new would come in,
14 they would start with the board or they're the
15 shot-caller for whatever reason, because they had
16 the immunity. And they would say, "All right. Now
17 we're going to get rid of all these guys that are
18 snitching." But it would be the other half of the
19 guys that were snitching.

20 Q. So it's hard to tell who's who?

21 A. Yeah.

22 Q. But you said on direct, when the house is
23 on fire, you put out the fire and then you clean up
24 the yard.

25 A. Yes. Stop worrying about who you think is

1 dropping kites. Look at the guys right there that
2 you know are doing this foul shit, the ones that are
3 really messing with other people's girlfriends, the
4 ones that have never lifted a finger to help anybody
5 else but themselves. Start there. Get rid of them,
6 or whatever. But does it make sense to you, if your
7 house was on fire, would you worry about pulling the
8 weeds out of the garden, or would you worry about
9 putting the fire out?

10 Q. But using the metaphor that you used, what
11 did you mean by -- how would you put the house fire
12 out?

13 A. Bring the hose back to what they're
14 supposed to be. Enforce the rules we have already
15 before you start making a bunch of new rules. Stop
16 everybody from being at each other's throat. Stop
17 all that. Stop doing dumb stuff like putting hits
18 on Gregg Marcantel. Help each other out.

19 Q. We'll get to Gregg Marcantel, but --

20 A. You don't like that name?

21 Q. No, that's fine. I'm very comfortable
22 with the name.

23 A. I wouldn't like it.

24 Q. Okay. So you would just go back to the
25 old ways?

1 A. I would go back to -- when I got into the
2 gang, it was more of a brotherhood. We did bad
3 things, definitely, and did drugs. That wasn't the
4 primary function. We were supposed to be brothers.
5 We were supposed to help each other out. When
6 somebody came in, we were supposed to give him a
7 care package. When they came in, we were going to
8 say, "Hey, brother, here are some sweats, here's a
9 TV, here's a few bucks for your books. Here's some
10 money to call your wife or your family or your mom,
11 whoever you talk to, whoever you care about. Let
12 them know that you're okay. And all this other
13 stuff is secondary. By the way, we're going to get
14 high, because we're all drug addicts, whatever."

15 And it turned into, "We don't give a shit
16 who your wife is, who your mom is, if she's dying or
17 whatever. You just try to get some dope in here for
18 the tabla to get high. And when you get out there,
19 by the way, we want you to sacrifice your life and
20 send dope to us." That's what I'm talking about.

21 Q. And the other folks that wanted to step up
22 or take over, they could just kite people out and
23 move around?

24 A. Not necessarily just them. Some of them
25 had good intentions, as far as honor among thieves

1 mentality. Some of them really meant what they
2 said, as far as trying to make it better for people
3 and trying to stop that stuff. But then they had
4 somebody right next to them with a sack of dope
5 whispering in their ear. And if that didn't work,
6 then they'll kite them out. And they'll say, "Oh,
7 look, he PC'd." You know what I mean?

8 Q. So if I understand, what you're saying is
9 that really the rules fell out -- the rules just
10 stopped being enforced.

11 A. The rules changed with each person's --
12 every board, every new leader. They changed
13 according to what was convenient for them at the
14 time.

15 Q. Right. And in terms of leadership, then
16 how did any one group decide on who was the leader?

17 A. Whoever had the sack, whoever had the most
18 charisma. It was supposed to be whoever had the
19 most respect, put in the most work. But like Arturo
20 Garcia, when I came back, he's the leader. I don't
21 even know what he ever did, ever, period, other than
22 have a dope sack.

23 Q. But he developed a relationship with Kate,
24 your --

25 A. Kathy, yeah.

1 Q. Kathy, pardon me. And that violated a
2 rule.

3 A. Yeah, but -- and people were mad at me
4 because I wasn't making a big deal of it. I would
5 tell everybody, "Go to town. You go, brother."

6 Q. But --

7 A. "You deserve each other."

8 Q. So they're more like guidelines, I guess,
9 is my point.

10 A. Well, at this point, yeah, they're more
11 guidelines. But before, they were things you would
12 get killed over. And people had died over them.
13 Julian Romero got stabbed, beat up, shot, over that
14 rule.

15 Q. And that was because he developed a
16 romantic relationship with Gerald Archuleta's wife.

17 A. Yes.

18 Q. And that's a long-term relationship that
19 still exists to the day?

20 A. I believe they're married.

21 Q. And if I understood your reports
22 correctly, you think he was hit and stabbed and
23 shot --

24 A. I know he was.

25 Q. -- because Gerald Archuleta put the hit on

1 him?

2 A. I know he was. Other than that, nobody
3 could say nothing bad about Julian as far as the
4 gang.

5 Q. And that goes back to what you were
6 saying, having respect for one another.

7 On that point, we heard you testify that
8 you and Big Jake Armijo had considered robbing Chris
9 Garcia at some point?

10 A. Yeah, it was before I really even got
11 close to him. I think it was at Southern. We were
12 at Southern together. And we were talking about it,
13 because there was paperwork on him, and he had a lot
14 dope. We were saying, "Well, ain't nobody doing
15 nothing about it, anyway. Let's go get ours.
16 Everybody is there getting theirs. Let's go get
17 ours."

18 Q. So in your mind, that was okay because he
19 had paperwork on him?

20 A. In my mind, that was okay at that time.

21 Q. Did you think it was -- according to your
22 comments to the FBI, you thought that the whole
23 structure changed almost generationally, like the
24 new generation?

25 A. This last generation has changed four or

1 five times. It wasn't just a generation. But my
2 generation -- when I got to prison, the older ones
3 used to call us the Pepsi Generation. The Pepsi
4 Generation. A remark like -- and then during -- a
5 remark like, "You guys are stupid." Know what I
6 mean? The Pepsi Generation.

7 Q. And it changed who could be a member, how
8 you were --

9 A. Angel Munoz was the last person I knew
10 that was respected universally. He used to say he
11 don't want to be the leader, but he was the leader.
12 He was pretty much. I don't know if he wanted it or
13 not for real in his heart, but he used to say he
14 didn't want to be the leader. He used to say, "I
15 don't want kids. I don't want dads. I want
16 brothers. That's it."

17 After him, nobody commanded the same
18 respect or the same obedience or the same anything,
19 really. Everybody tried. But Angel -- I seen him
20 be like Leroy Torrez, and that was like his son. He
21 treated that guy like his son. But JR -- Leroy
22 Torrez had -- I don't even remember what he did, but
23 he did something. And we asked him what's up. And
24 he put his head down, and he said, "Hit him."

25 And these other guys, they wouldn't green

1 light their best friend. They wouldn't green light
2 even their worst enemy, as long as that guy was
3 giving him dope. So Angel had that respect, because
4 he didn't -- whatever you say about him, I never
5 seen it, he never used the dope as part of
6 consideration. He did whatever was good for the
7 group, was what he would consider, in my eyes.

8 Q. You think drug addiction completely
9 changed the SNM?

10 A. I think the leadership quality changed the
11 SNM. Bad leaders made bad decisions, and bad
12 decisions led to bad outcomes.

13 Q. Let's talk about those transcripts a
14 little bit. You talked about this first transcript
15 and I think it was audio 356. But the very first
16 time you spoke to Mr. Baca over the phone, the name
17 Gregg Marcantel never came up, did it?

18 A. You have the transcript and you have the
19 recording. Like I said, you can play it.

20 Q. Well, we played it today.

21 A. Okay. What did you hear?

22 Q. Well, I'm asking you. Did you ever hear
23 his name come up?

24 A. I remember it came up, but I don't know if
25 it came up in that particular phone call or that

1 conversation.

2 Q. And in that conversation, you guys talked
3 about: The only three people would know about that,
4 and that would be you, Eric Duran, and Anthony Baca.

5 A. Yeah. He's saying, "Don't tell nobody
6 else."

7 Q. And he said it was going to be you three
8 only. And at that time, you had already contracted
9 with the FBI to become a confidential human source
10 of information.

11 A. Yeah. I didn't mention that on that phone
12 call, though.

13 Q. No. It would have defeated the purpose of
14 having the phone call.

15 A. Yes.

16 Q. But you were a confidential human source?

17 A. Yeah.

18 Q. And you'd become a confidential human
19 source shortly after your arrest in September 2015?

20 A. Yes.

21 Q. You had an initial debrief with the FBI
22 and the United States attorney on October 6?

23 A. I'm not sure of the date, but yeah, sounds
24 right.

25 Q. And then you signed a confidential human

1 source contract on October 27?

2 A. Sounds right. If that's what the
3 paperwork says.

4 Q. And so they gave you the phone and just
5 had you, again, go back out in the field, and you
6 were assisting the FBI in doing controlled
7 purchases.

8 A. I made controlled buys and stuff and
9 pretty much that was my life.

10 Q. And you're working off your charges?

11 A. I wouldn't say I was working them off. I
12 still got charged. I still face a significant
13 amount of time, but I definitely got a deal, like
14 you said.

15 Q. And you're putting in the work for Team
16 America?

17 A. I'm on Team America.

18 Q. And you're putting in the work?

19 A. I'm putting in work.

20 Q. So I want to make sure the jury
21 understands is that first recording we listened to
22 it was you, who was a Government informant, talking
23 to Mr. Baca; correct?

24 A. You can go back to the transcript and you
25 can look at it. It's either me or Crazo, because we

1 were the only two --

2 Q. You and Crazo were both Government
3 informants?

4 A. Yes. But I don't think either one of us
5 knew it at the time. I don't know if he did or not.
6 The way I understand it, whoever initiated the call
7 is a confidential human source. So whoever
8 initiated that call, whether it was me or Crazo,
9 it's going to be the confidential human source, is
10 the way I understand it.

11 MR. LOWRY: Can we approach, Your Honor?

12 THE COURT: You may.

13 (The following proceedings were held at
14 the bench.)

15 MR. LOWRY: Your Honor, this gets a little
16 overly complicated, the way these recordings were
17 made. The communication was initiated by a phone
18 call. Both confidential human sources also had
19 their ELSUR devices, and both used both to record
20 calls. So the Government's exhibit I think is the
21 ELSUR device. And we had a transcript of the exact
22 same recording made of the phone call. This witness
23 just testified that whoever initiated the call was
24 the confidential human source. And this shows who
25 initiated the call; whereas, the Government's

1 transcript did not, because it was an ELSUR
2 recording. All I want to do is show him the very
3 first page that shows who initiated the call.

4 MR. CASTELLANO: The problem is that
5 sometimes these were recorded at both ends. For
6 example, if Eric Duran called Montoya, Eric Duran's
7 portion may have captured additional information
8 from discussions before the call. So Mr. Montoya
9 would only know what he captured when he answered
10 the call.

11 So they may not have the right exhibit to
12 ask this witness that question. Because unless he
13 initiated the call, he doesn't know what happened
14 before the call was initiated, if that makes sense.
15 This witness would have no basis of knowledge what
16 happened on the other end of the line until he
17 actually answered the phone.

18 THE COURT: Well, I think I'll let you
19 explain this to the jury with that. But it seems to
20 me that he's got a transcript here of the telephone
21 call, and --

22 MR. CASTELLANO: I agree.

23 THE COURT: -- chances are 50/50 it's
24 right.

25 MR. CASTELLANO: The issue is that he may

1 not have been part of the conversation until he
2 answered his phone. And so, like I said, Eric Duran
3 may have had a conversation before the call started
4 to which Mr. Montoya wasn't privy. I don't know how
5 we explain that to the jury. Mr. Montoya only knows
6 what happens when he answered his phone and began
7 the conversation. So it's maybe a better question
8 for Eric Duran and not Mario Montoya.

9 MR. LOWRY: Mario Montoya answered the
10 phone.

11 THE COURT: I'll let you put it up there.
12 I think if the Government wants to explain, it's
13 that important -- looks like it's marginal to me --
14 if the Government wants to explain it, it's probably
15 50/50 you're right.

16 MR. LOWRY: I wouldn't be here if I
17 thought I was wrong.

18 THE COURT: If the Government wants to
19 pursue another explanation, they can do it. All
20 right.

21 (The following proceedings were held in
22 open court.)

23 THE COURT: Mr. Lowry.

24 MR. LOWRY: May I approach?

25 THE COURT: You may.

1 A. Like I say, it's just my assumption about
2 the confidential human source thing. I don't know
3 that for a fact. My assumption.

4 BY MR. LOWRY:

5 Q. I'm going to show you the beginning of
6 that call.

7 A. "Hello," I would say I was answering the
8 phone if I said "Hello."

9 Q. If you were answering, who initiated the
10 call?

11 A. I would probably say maybe Eric Duran.
12 Like I said, I don't know if that's how the papers
13 are. Just by me reviewing them, that's what it
14 looks like to me.

15 Q. If I understood your testimony just now,
16 you said whoever initiated the call would be a
17 confidential human source.

18 A. I believe that's the way -- would be the
19 confidential human source in that paperwork. I
20 believe that by reading it, and looking at it,
21 because sometimes it lists me as the confidential
22 human source, and sometimes it lists Eric Duran as
23 the confidential human source. So my opinion is
24 that maybe the person that initiated the call is the
25 confidential human source. Because we're both --

1 like I said, I don't know that he is, and I don't
2 know if he knows that I am. But it would be my
3 assumption that that's why it's like that. I
4 wondered about it myself.

5 Q. So you worked with the FBI; right?

6 A. Yes.

7 Q. And after that first call, I believe you
8 said, "Hey, give me a couple of days." You talked
9 about that on direct. You didn't want to act right
10 away.

11 A. Yeah, I wanted time to find out if he
12 wanted me to get a weapon, which I say I don't
13 really know.

14 Q. And you wanted time to coordinate with the
15 FBI so you could plan your next steps; correct?

16 A. Okay. I was -- in my opinion, my thought
17 process, I'm thinking, I don't know what these
18 people want me to do. Do they want me to say I have
19 a gun and I'm going to do it and that's the case
20 right there? Or do they want me to play along and
21 say, "No, you get me a gun?" You know what I mean?
22 And see where it goes. So basically, they come and
23 just talk to me, see where it goes. You don't have
24 a weapon.

25 Q. Right. They said for you to tell them you

1 don't have a weapon.

2 A. Yeah.

3 Q. Because they didn't want you participating
4 in the conspiracy.

5 A. I think they wanted me to let them talk.

6 Q. Right. And they wanted them to reach out
7 to other people.

8 A. Yeah.

9 Q. That's fair?

10 A. I would say they wanted to see if they
11 were really going to do this, or if they're just
12 talking shit. Excuse my language. Sorry.

13 I really believe that they were curious at
14 that point whether it was an actual thing or just
15 throwing off steam or something.

16 Q. But you would agree with me in that first
17 call we listened to, there is no mention of Gregg
18 Marcantel.

19 A. If you play the tape and we listen to it,
20 whichever one is the first one, I could answer your
21 question. But there's a lot of tapes. In some of
22 them he's mentioned, and some of them he's not. If
23 you want to play it and we'll listen to it, and I'll
24 tell you if I hear his name or not.

25 I understand it's your job to defend, and

1 it's my job to tell the truth. I'm not trying to
2 confuse anybody. I'm trying to stick to the facts
3 here.

4 Q. Right. But we listened to it. Do you
5 remember what we listened to?

6 A. We listened to a few, yes. I remember it
7 was one of them we listened to. But I don't know
8 which one was the first one or which one was the
9 last one, or which one his name was specifically
10 mentioned. But thank God, it's on tape.

11 Q. Right. Now, the second recording we
12 listened to was Government's Exhibit 380. And I
13 want to play a little clip for you, if we could.

14 (Tape played.)

15 Q. Now, you were talking about inaccuracies
16 in the transcript, but what you just heard was Mr.
17 Baca saying Barney Rubble or the other one; right?

18 A. I heard Crazo telling him -- what it
19 sounds like to me, Crazo is telling him, "You didn't
20 tell him everything. You only told him two."

21 And Pup says, "Huh?"

22 And Crazo says, "You only told him two."

23 Not -- T-W-O is what he's saying. "You only told
24 him two." He doesn't know who the other one is, I'm
25 supposing. And Pup said, "Yeah, I told him Barney

1 Rubble or the other one."

2 Q. Right.

3 A. "But he only told me two."

4 Q. And throughout this transcript, the two
5 names that keep cropping up are Adam Vigil and
6 Dwayne Santistevan?

7 A. I haven't heard. Yeah, if that's what --
8 if those are the names on this particular recording,
9 yes.

10 Q. And those would be the two names we're
11 talking about; if you agree with me, that those were
12 the two names?

13 A. Those are the two names we're talking
14 about.

15 Q. Right. Now, later on in that, you sort of
16 try to steer Mr. Baca towards the top dog or what
17 you call the top one.

18 A. I don't think I tried to steer him
19 anywhere. I just talked to him like I normally
20 would and acted the way I normally would if I was
21 still down for this cause.

22 Q. Right. But on your direct examination,
23 you said that the top one was Gregg Marcantel.

24 A. That's what I would consider the top dog,
25 yes.

1 Q. But if they're talking about STIU
2 officers, the top dog is -- the top one is Dwayne
3 Santistevan; correct?

4 A. If you're specifically talking about STIU,
5 the head of STIU would be Dwayne Santistevan.

6 Q. Right. And if you're talking about Barney
7 Rubble as the other one in the clip we saw, the
8 other one being --

9 A. Administration. So the top dog in
10 administration would be Gregg Marcantel.

11 Q. Well, they weren't talking about
12 administration; they were talking about STIU.

13 A. Adam Vigil is administration. Adam Vigil
14 is the unit manager, a lieutenant. He could have
15 been a deputy warden.

16 Q. Right. But they were talking about --
17 you're familiar with Dwayne Santistevan from your
18 days at the pen; right?

19 A. Yeah, Dwayne Santistevan would be top dog
20 in STIU.

21 Q. Right.

22 A. Gregg Marcantel would be the top dog of
23 administration.

24 Q. And in the same transcript when Mr. Baca
25 was saying, "Look them up on Google searches," you

1 weren't looking up the administration; you were
2 looking up STIU?

3 A. I was looking up Director of Adult
4 Prisons, Secretary of Corrections. That's what I
5 was looking up on the cellphone.

6 MR. LOWRY: May I approach, Your Honor?

7 THE COURT: You may.

8 A. And I think he suggested STIU as well,
9 maybe. The highlighted portion.

10 BY MR. LOWRY:

11 Q. You can read the whole thing.

12 A. It doesn't say that at all. I'm telling
13 you. I'll give you -- I'll give you -- I think part
14 of the STIU, or the STIU, or whatever, website.

15 MR. LOWRY: I was just asking him to
16 review it, not read it.

17 A. Don't read? Okay, I read it. Or STIU
18 would mean administration or STIU. That's what it
19 would mean to me.

20 Q. Right. You were focused on STIU because
21 that's where Adam Vigil and Dwayne Santistevan
22 worked.

23 A. Or STIU. Secondary was STIU, is how I
24 would take it. And that's a different context.

25 Q. But Gregg Marcantel's name never comes up

1 in this transcript. Only Adam Villa and Dwayne
2 Santistevan.

3 A. People don't say "gun," people don't say
4 "murder," people don't say a lot of things in that
5 transcript that are taking place.

6 Q. Right. But I mean, if you're on Team
7 America, you want this to be Gregg Marcantel,
8 because that's where you're trying to push it.

9 A. That's where you're not getting it, man.
10 I don't care if these guys get convicted or they're
11 found innocent. It's not really about that to me.
12 I don't care. I'm redeeming myself. I'm doing what
13 I need to do for me. I'm struggling with my
14 addiction, with my skeletons in my closet, and I'm
15 doing what I need to do for me and my family.

16 Q. Right.

17 A. Whatever happens to these guys, I don't
18 have a horse in that race, man. I agreed to
19 cooperate and answer the questions truthfully.

20 Q. Work with me on the transcript, then.
21 Because the transcript doesn't say Gregg Marcantel
22 anywhere in it.

23 A. It doesn't say. I hadn't seen it.
24 Nothing you've shown me. But I've heard it on the
25 tapes. I don't know which one, but I've heard it on

1 the tapes. What you've shown me so far, I have not
2 seen the name Gregg Marcantel. Have not.

3 Q. Would you like to review the whole
4 transcript?

5 A. Play the whole tape.

6 Q. Well, it would be faster if you review the
7 transcript.

8 A. I'm a pretty slow reader, but I'll read it
9 if you want me to.

10 MR. LOWRY: May I approach?

11 THE COURT: You may.

12 A. Is this all one conversation? Sir? Is
13 this all one conversation?

14 Q. Yes.

15 A. How far of this do you want me to read?
16 The entire thing?

17 Q. Well, I was asking you a simple question:
18 If you recall hearing Gregg Marcantel's name
19 anywhere in that conversation and --

20 A. So I heard his name in some conversations;
21 in some conversations I didn't. In this particular
22 conversation, I would have to go through the whole
23 thing to remember exactly what was said. It was two
24 years ago. And like I said, most of the time I was
25 just saying, "Yeah, yeah," playing a role. I don't

1 remember which conversation it did or didn't come up
2 in. It came up in some, and some of them it didn't.
3 This one, I'm inclined to say that it didn't come up
4 in this conversation, but I wouldn't know for sure
5 without reading the whole thing.

6 Q. And I don't want to rush you. I just --
7 like you said, I want to know the truth.

8 A. I'm telling you the truth. I'm trying to
9 give you guys to the best of my ability the truth.

10 Q. But the question is simple. You said you
11 reviewed the audiotapes before you came to court to
12 testify.

13 A. Yes, and we played most of them in here
14 today. But there is a lot of audiotapes and there
15 are different conversations.

16 Q. This is the second audiotape, and you have
17 the transcript right there, so just finish reviewing
18 it and let us know.

19 A. Okay. Well, yeah, I don't believe
20 Marcantel's name is in this conversation. I think
21 when he says that one or the other one, he's either
22 referring to Santistevan or Marcantel.

23 MR. LOWRY: May I approach, Your Honor?

24 THE COURT: You may.

25 A. As far as I can -- and I think Carlos

1 Valdez' name is mentioned somewhere in there, too.

2 BY MR. LOWRY:

3 Q. Thank you, Mr. Montoya.

4 A. Yes, sir.

5 Q. And that brings us to the third transcript
6 that we listened to today. And by the way, nobody
7 gave a time reference for the first two recordings
8 we heard. Do you, by any chance, know what time
9 that they were recorded?

10 A. I think most of them were in the daytime.

11 Q. But do you know what month?

12 A. Oh, it was after I got arrested and before
13 Christmas Eve.

14 Q. That's the best of your ability?

15 A. Yeah.

16 Q. So during the second call, then, at that
17 point you're telling Mr. Baca you can't get a gun?

18 A. One of the calls, I was telling him I
19 can't get a gun.

20 Q. Right. And the whole purpose of that is
21 so -- to see where the conversation goes, to see how
22 he's going to go get a weapon?

23 A. If he gets a gun, and if he proceeds with
24 the plan and really tries to get it done, or --

25 Q. Right. But you suggested that he go to

1 Chris.

2 A. I suggested he go to Chris for money.

3 Q. And a gun.

4 A. I don't think I suggested the gun. He
5 said, "Tell Chris, kick in with some money."

6 Q. Well, you had gone to Chris for guns
7 before, Chris Garcia?

8 A. I had gone to Chris for guns and money and
9 dope before, on a hundred occasions.

10 Q. Right. And you had actually testified on
11 direct that I think you picked up a pistol from
12 Chris to actually do the Shane Dix murder.

13 A. Chris actually gave me two pistols that I
14 was supposed to use in that crime.

15 Q. But you got pulled over, and those pistols
16 got confiscated by the police.

17 A. Yeah, I believe, yeah. It was one pistol.

18 Q. Right. And if I understand correctly, you
19 were never charged with that because you worked with
20 Mr. Lerner.

21 A. I never worked with him. He asked me --
22 and I would have. I would have. At that point was
23 pretty much the beginning of the end for me, while
24 I'm trying to get away from this. And he told me,
25 "I'll make sure you don't get charged for this

1 firearm. You make some controlled buys for me. I
2 want you to buy from Chris Garcia."

3 And I told him, "Yeah, okay."

4 He told me, "Okay. You come by tomorrow
5 or you're busted."

6 I was, like, "Let's just do it now."

7 And he said, "No, come by tomorrow." So
8 he let me go.

9 And at that time I was really conflicted
10 about what I was going to be in my life, if I wanted
11 to be a drug addict, or what. I was in the process
12 of leaving my ex-wife. But the guns were not in the
13 trunk of her car -- the gun. And they never showed
14 up. So, yeah, he never showed up. So I never
15 worked with him. I never gave him permission or
16 anybody before this case.

17 Q. But you weren't charged with that? Lerner
18 never followed through?

19 A. No, I think -- I don't know, man. I think
20 it was my opinion that -- I think he was breaking
21 the rules a little bit by not filing that case. And
22 I think they don't do it like that no more. That
23 was in 200- -- a long time ago.

24 Q. 2004, 2005?

25 A. Somewhere around there. But I was ready

1 to go then, actually.

2 Q. You were ready to do it then, work with
3 him?

4 A. I would have, if it would have happened
5 that day, yep.

6 I've done a lot of things in my life, but
7 I wasn't going to kill nobody at that point. I had
8 a gun in the trunk for that purpose.

9 Q. But the larger point, I think, in
10 reviewing these transcripts is every time Mr.
11 Marcantel's name comes up, it comes up from
12 someone -- at least initially -- other than Mr.
13 Baca. There is a transcript where you and Chris
14 Garcia are talking about "Why waste your time with
15 Santistevan? Why don't you go for the top?"

16 A. Yeah, the conversation with Chris -- and I
17 don't know who initiated the conversation -- but the
18 conversation taking place at this time between this
19 group of individuals and myself was: "If you're
20 going to step in front of a bus, then step in front
21 of the fastest bus or the best bus or go all out, or
22 stay home. Don't even do it. Or do it all out. If
23 you're going to do it, do it right. If not, don't
24 do it at all.

25 Q. That's in Government's Exhibit 394, where

1 it's just you talking to Chris.

2 A. Maybe. Sounds right.

3 Q. Would you like to see the transcript?

4 A. I believe you.

5 Q. But again, you're working with Team
6 America; you know what Team America's game plan is?

7 A. I actually don't know what their game plan
8 is. They don't tell me. They just tell me they're
9 going to call and they call. Act like yourself, be
10 yourself, don't expose yourself. Act like you would
11 normally act. And that's what I would do. I would
12 be trying to promote myself within the gang.

13 Q. So you're saying it was your idea, then,
14 to come up with "Go for the top, go for the
15 secretary, why waste your time with the low guys"?

16 A. I'm just -- I wouldn't say it was my idea.
17 That's what I would normally say. That's what I
18 would say. If I was still involved in the gang, and
19 I was having this conversation, that would be my
20 part of the conversation. I would be, like, "What
21 do you mean? Why are you going to shoot this guy?"

22 Q. But you weren't involved in the gang.
23 You're part of Team America.

24 A. But I'm playing like I'm part of the gang.

25 Q. For Team America?

1 A. For Team America; right.

2 Q. So you're suggesting, "Don't waste your
3 time with the low-level guys. Go for something
4 bigger."

5 A. That's what I would do.

6 Q. And even then, he said it's up to you?

7 A. He said, "Kill anyone you want, as long as
8 you kill one of these guys for me." He said, "It
9 doesn't really matter to me which one." He doesn't
10 care which one. He's trying to make himself out to
11 be John Gotti, or, whatever. I don't know.

12 Q. Did there come a time where, throughout
13 all the conversations, Mr. Baca said, "Don't tell
14 Chris Garcia about anything"?

15 A. Yes.

16 Q. Because he didn't want Chris Garcia to
17 know why anybody needed a gun?

18 A. He was telling me that. And I think it
19 was more for my benefit. Because Chris knew
20 everything. And we were talking about it. I wanted
21 to make sure Chris --

22 Q. Well, Chris didn't know anything from Mr.
23 Baca, did he?

24 A. I don't know. I don't know what
25 conversations they were having when I wasn't on the

1 phone because they were calling Chris separate from
2 me, I believe. I don't know for sure.

3 Q. But from the conversations you
4 participated in?

5 A. From the conversations I participated in,
6 what I was being led to believe or being told was:
7 Chris doesn't know anything, and we don't want him
8 to know anything, because he might tell because
9 there's paperwork on him.

10 Q. So the idea was to keep him in the dark.

11 A. In the dark. We just need some weapons
12 for whatever reason. But then when I would go talk
13 to Chris, he knew everything. He would say on the
14 conversation, "Yeah, I talked to Pup," and when he
15 said it was that one, I'm verga.

16 Q. Did there come a time when the FBI told
17 you, "Hey, you've got to tell Chris what's going on;
18 he needs to know who the target of the hit was"?

19 A. No, they never told me to tell anybody
20 anything or suggest anything to anybody. They told
21 me to play along like I'm part of the gang, like I'm
22 willing to follow their instructions.

23 Q. Because the very last call that we
24 listened to, the one that's on November 29, 2015,
25 you're the first person that mentions Gregg

1 Marcantel.

2 A. Okay.

3 Q. Well, it's not Chris Garcia.

4 A. Okay.

5 Q. So you --

6 A. Can I see the transcript before we talk
7 about it?

8 Q. Absolutely.

9 MR. LOWRY: May I approach, Your Honor?

10 THE COURT: You may.

11 A. Okay. Where are you talking about? I'm
12 not trying to slow you down.

13 BY MR. LOWRY:

14 Q. No, that's fine. Take your time.

15 A. I mentioned Marcantel by name. At that
16 point it was already settled that's who was supposed
17 to be getting. I'm saying, yeah, Marcantel is a big
18 boy.

19 Q. But you just testified it wasn't settled.
20 You could have taken your pick.

21 A. Well, I could have taken my pick, yeah. I
22 could have taken my pick and I could have settled on
23 anyone I wanted. I could have came back and said,
24 "I'm going to kill Archuleta." I could have came
25 back and said any one of them. It didn't matter to

1 him which one. I could have said Archuleta. That's
2 the name that we settled on.

3 Q. Who is "we"?

4 A. The people in this conversation. Like I
5 just told you, I went in there acting like I would
6 normally act. These are the suggestions, one of
7 these guys. I don't care which one. Pick one and
8 do it. That's the one. That's the one I picked.
9 This is, "Okay," so then I'm going to -- this is the
10 one I suggested. You know what I mean?

11 Q. That's the one you suggested after you
12 suggested --

13 A. After we had the conversation, one of
14 these ones right here.

15 Q. Right.

16 A. One of these ones right here, you pick
17 which one. I don't care which one. That's the one
18 I picked.

19 Q. Right. And that's after you suggest going
20 for the Secretary of Corrections, instead of the
21 low-level guy.

22 A. I didn't make the decision. I'm the pawn.
23 I'm the guy that's going to go do it.

24 Q. You did make the decision.

25 A. If it was my decision, I'd choose somebody

1 else to do it.

2 Q. You did. You chose Mandel Lon Parker.

3 A. I chose Mandel Parker to come with me.

4 Q. Correct.

5 A. Yeah, but I didn't choose him to go do it.

6 I didn't initiate this plan. I was at home getting

7 busted for selling heroin. And all of a sudden, I

8 get a phone call from the North facility --

9 Q. Hold on, Mr. Montoya.

10 A. Wait up. Do you want an answer?

11 Q. Mr. Montoya, hold on for a second.

12 A. I get a phone call from the North, and

13 get --

14 Q. This started when you said, in the very
15 first call, there's going to be three people that
16 know about it. You were going to handle it. You
17 were going to handle the business yourself. It was
18 you, Eric Duran, and Anthony Baca.

19 A. Yes.

20 Q. And you told Anthony Baca, "I'll handle it
21 myself"?

22 A. Yeah, I told him that at first, yes.

23 Q. And then after you talked with the FBI,
24 they said, "You've got to tell them you don't have a
25 gun. You got to go somewhere else."

1 A. They didn't tell me, "Don't tell them
2 that." They didn't tell me to tell him anything.
3 They told me, "Go along with this. Go along with
4 whatever. But you don't have a gun."

5 Yeah, they told me I don't have a gun.

6 Q. They told you you don't have a gun?

7 A. I don't have a gun.

8 Q. But you have in the past? In September
9 you were busted with a gun.

10 A. I'd had guns in the past.

11 Q. A gun you didn't have to plead guilty to.

12 A. I've had numerous guns.

13 Q. You're not going to have to serve
14 mandatory prison time.

15 A. A lot of guns that I didn't have to serve
16 mandatory prison time. I thank God every day that I
17 don't.

18 How many guns do you think your clients
19 have, and they don't have to serve?

20 Q. I get to ask the questions. Not many.
21 He's been in prison.

22 A. How many shanks?

23 Q. So --

24 A. How many murders?

25 Q. So you got to say, "I need help"; correct?

1 A. Yeah, I got to say I need help.

2 Q. You got to pick the help.

3 A. I got to pick the help, yeah.

4 Q. And you got to go pick the source of the
5 firearm.

6 A. No, I didn't pick the source.

7 Q. Well, you suggested the source.

8 A. I think the source was -- that's the
9 person I was close to. That's the person I used to
10 hang out with, Chris Garcia, as you pointed out last
11 time we were talking. And when I suggested it, when
12 I mentioned it, about the money, I think the
13 response was, yeah, we're already on that. We're
14 already on that. I'm pretty sure it was something
15 to that effect.

16 So I didn't pick the source. That was the
17 source. That was pretty much the logical source.

18 MR. LOWRY: May I have a moment, Your
19 Honor?

20 THE COURT: You may.

21 A. Mr. Lowry, I'd like to apologize now.
22 When you come on me like that, it's my natural
23 reaction to --

24 Q. No --

25 A. -- push back. And I apologize. It's not

1 about that.

2 Q. I don't mean to come at you.

3 A. It's your job. I understand.

4 Q. Now, I just want to go back. When we
5 started talking about benefits, I want to sort of
6 end with benefits. The Government didn't -- they
7 asked about some of your priors. You've had a
8 fairly significant number of prior convictions;
9 correct?

10 A. Yes, I have.

11 MR. LOWRY: And may I approach, Your
12 Honor?

13 THE COURT: You may.

14 BY MR. LOWRY:

15 Q. I'm handing you what's been marked for
16 identification as AJ-1.

17 MR. LOWRY: And Your Honor, I believe I
18 was informed by the United States that we could
19 stipulate to its admission.

20 THE COURT: All right. Any objection, Mr.
21 Castellano?

22 MR. CASTELLANO: No, sir. We have the
23 same exhibit on our side as well. There is no
24 objection.

25 THE COURT: Any other defendant have any

1 objection?

2 Not hearing any, then Defendants' Exhibit
3 AJ-1 will be admitted into evidence.

4 (Defendants' Exhibit AJ-1 admitted.)

5 BY MR. LOWRY:

6 Q. Do you recognize that?

7 A. If it's my rap sheet or my J&Ss, or all
8 the crimes that I was convicted of, I would
9 stipulate to that also. I was not a good guy. I'm
10 still a work in progress, is the term I like to use.

11 Q. The reason I bring it up is just because
12 when you're trying to calculate your criminal
13 history or see what kind of prison sentence you get,
14 your criminal history bears a lot on that factor,
15 does it not?

16 A. Yes, I understand it can go back to 10
17 years or 15 years. I served a certain amount of
18 time. I think most of that, if not all of it, is
19 beyond the 15-year mark.

20 THE COURT: Mr. Lowry, do you want to take
21 this up after we take our afternoon break?

22 MR. LOWRY: Absolutely, Your Honor.

23 THE COURT: All right. We'll be in recess
24 for about 15 minutes. All rise.

25 (The jury left the courtroom.)

1 THE COURT: All right. We'll be in recess
2 for about 15 minutes.

3 (The Court stood in recess.)

4 THE COURT: All right. We'll go on the
5 record. Is there anything we need to discuss before
6 we bring the jury in, Ms. Armijo, Mr. Castellano?

7 MS. ARMIJO: No, Your Honor.

8 MR. CASTELLANO: No, Your Honor.

9 THE CLERK: We're waiting on counsel for
10 defendant Herrera, and Mr. Villa just walked in.
11 There they come.

12 THE COURT: All right. Ms. Duncan, you
13 had something?

14 MR. LOWRY: Thank you, Your Honor.

15 MS. ARMIJO: Your Honor, I did think of
16 something.

17 THE COURT: Okay. Let me let Ms. Duncan,
18 then we'll come back to you.

19 MS. DUNCAN: Your Honor, I just wanted to
20 be heard on the Government's trial brief,
21 introducing their Exhibits 304 and 305. I want to
22 note in the transcript there is no doubt that Mr.
23 Baca is talking about the murder for which he's been
24 convicted and the question before the Court was
25 whether it was an enterprise act, which our position

1 is it absolutely isn't.

2 If you read on page 6040, when Mr. Baca is
3 talking about the events leading up to the murder,
4 he says, "And then Luis comes at me, and he starts
5 swinging the fierro at me. But the juras already
6 see there, right there by the fucking metal
7 detector, and they fucking hey, hey, hey."

8 So what that transcript indicates is that
9 Luis Velasquez, who is the person who Mr. Baca
10 killed, attempted to stab Mr. Baca with a shank the
11 day before Mr. Baca stabs him. So there are a bunch
12 of things in play here. But there is just not
13 sufficient evidence from which the jury can infer
14 that this had something to do the SNM versus a
15 personal disrespect issue.

16 And the fact that the person who fought
17 Mr. Velasquez with Mr. Baca was not an SNM member
18 also rebuts his allegation that it was on behalf of
19 the enterprise.

20 So I think the Court's initial inclination
21 to keep this out was the right one.

22 THE COURT: Well, it was based upon the
23 fact -- why I initially kept it out was because the
24 Government wasn't presenting any admissible evidence
25 that this was an SNM-related crime. I think they

1 have presented some evidence.

2 I guess where I am is whether it's
3 sufficient for a reasonable jury to infer. I guess
4 in one sense I've been sitting here thinking, boy,
5 if I let this one in, any murder by an SNM member is
6 SNM-related. On the other hand, I'm sitting here
7 thinking, well, they've got Mr. Baca saying, Carnal;
8 they say he's not a carnal, the fellow that wanted
9 to go along with him, and didn't, turned him down.

10 That was the reason I was asking a little
11 bit about the timetable of when he became a leader.
12 I was thinking during the lunch hour that if he was
13 a leader, once you become a leader, it's kind of
14 like everything you do becomes probably SNM-related.
15 You can't divorce yourself from the organization
16 that you're running. The president can't say he's
17 probably Trump Enterprises one day and president the
18 next. He's president. And so that doesn't seem to
19 fit.

20 So I'm thinking -- I do think the
21 Government has now pointed out some admissible
22 evidence. I do think we're a little bit further
23 down the pike than we were when I was saying I
24 didn't see any admissible evidence from having Mr.
25 Archuleta up here. But I've stared at that line. I

1 could almost memorize it now. I'm staring at it,
2 too, so I'll continue to give it some thought.

3 MS. DUNCAN: Okay.

4 THE COURT: All right. Ms. Armijo, can
5 yours wait?

6 MS. ARMIJO: We need to deal with it
7 before Eric Duran testifies. And he'll be the next
8 witness.

9 THE COURT: All right. All rise.

10 (The jury entered the courtroom.)

11 THE COURT: All right. Mr. Montoya, I'll
12 remind you that you're still under oath.

13 THE WITNESS: Yes.

14 THE COURT: Mr. Lowry, if you wish to
15 continue your cross-examination of Mr. Montoya, you
16 may do so at this time.

17 MR. LOWRY: I do.

18 THE COURT: Mr. Lowry.

19 BY MR. LOWRY:

20 Q. Mr. Montoya, you initially debriefed with
21 the United States on October 6, 2015; is that
22 correct?

23 A. Sounds right.

24 Q. Shortly after your arrest?

25 A. Shortly after my arrest.

1 Q. At that debrief they specifically asked
2 you about the hit on Gregg Marcantel?

3 A. I believe so. I believe that's recorded
4 also.

5 Q. And you told them you didn't have any
6 information whatsoever about it?

7 A. Before these phone calls, yeah. If it was
8 before these phone calls, I had no information on
9 it.

10 Q. So before the phone calls, you knew about
11 the United States' interest in Gregg Marcantel?

12 A. I think I was asked if I knew anything
13 about any hits on the DOC staff, any specific
14 threats. I think I said no at that point. There
15 are people always talk about stuff like that. And
16 you asked me who or when or where. Most of the time
17 I couldn't really say, because it usually goes in
18 one ear and out the other.

19 Q. Now, moving on, I want to finish up here,
20 but you agree with me you have an extensive criminal
21 history?

22 A. Yes.

23 Q. And starting as early as 1993?

24 A. Probably when I was 12 years old.

25 Q. Right. And you talked about this on

1 direct, that you spent -- actually, Mr. Yoakum was a
2 friend from the Boys' Home?

3 A. Yeah.

4 Q. So you spent time in Springer. So you
5 grew up in the system, so to speak?

6 A. I spent all my life addicted to drugs, and
7 committing crimes to get drugs.

8 Q. Right. They're all property crimes.

9 A. Most of them.

10 Q. So why revert to property crime in
11 Colorado? Was that to support a new drug habit?

12 A. Sometimes drugs. Colorado, I didn't
13 revert to property crime. I am pretty innocent till
14 proven guilty. And I'm going to plead the Fifth on
15 that. I am charged with a crime. But not every
16 time I was charged with a crime I was convicted.
17 Not everybody that is charged with a crime is
18 guilty.

19 Q. But in November 1993, you pled guilty in
20 two separate cases; one to two counts of auto
21 burglary?

22 A. Yes.

23 Q. And you got a three-year stint at the
24 Department of Corrections?

25 A. Yes.

1 Q. And you pled no contest to attempted
2 residential burglary?

3 A. Yes.

4 Q. And you got 13 months concurrent to the
5 auto theft charge?

6 A. Yes.

7 Q. And then in 1995, you actually escaped?

8 A. Yes.

9 Q. And you got, what, nine years but six
10 suspended on the escape?

11 A. Yes.

12 Q. And in May of 1995, again you entered a
13 guilty plea of receiving stolen property?

14 A. Yeah.

15 Q. And you had a seven-year sentence, but all
16 of that was suspended except for the habitual
17 offender sentence of four years?

18 A. Yes. Suspended the underlying, and gave
19 me the habitual time.

20 Q. And in October of 1996, you pled guilty to
21 bringing contraband into jail, which you talked
22 about on direct examination with Mr. Castellano?

23 A. Yeah.

24 Q. I'm just curious. Why didn't you -- when
25 you got to the jail and you're suffering with

1 withdrawals, you didn't consider just going into the
2 detox program, methadone program there?

3 A. I believe I was -- see, my memory is kind
4 of bad. But I believe I might have been on
5 methadone already before I got to the jail. But it
6 takes a while for them to start you on the program.
7 And I would have been perfectly happy getting
8 methadone. I didn't ask for somebody to give that
9 to me. I built up that reputation, and when I hit
10 the county jail, people come and bring me stuff.

11 Q. Now, in November 2002, you again pled
12 guilty to possession of heroin, controlled
13 substance?

14 A. Yeah.

15 Q. And got a two-year-six-month sentence?

16 A. I got the one-year bitch, and 18 months.

17 Q. And finally, in May of 2011, I think --
18 2010, pardon me -- you pled guilty to again
19 possession of controlled substance, heroin?

20 A. I think, yeah.

21 Q. So you have -- that criminal history will
22 factor in mightily in your sentencing guideline
23 calculation?

24 A. Some of it.

25 Q. All of it; correct?

1 A. No, not the stuff that's 15 years old or
2 older doesn't calculate in, according to my
3 understanding. I don't know. Maybe I'm wrong. But
4 the way I understand the guidelines is 10 years,
5 unless you serve more than 13 months. Then it's 15
6 years they can go back on the conviction and
7 calculate in, yes. And if it does calculate in,
8 it's like four years. I'm hoping it calculates in,
9 actually.

10 Q. You have a powerful incentive to get the
11 benefit of that bargain to reduce your sentence down
12 to nothing, don't you?

13 A. According to the plea bargain that I took,
14 the way I understand it, with all the points for all
15 the crimes that you listed, if they go by the
16 guidelines, I believe it's four years. I'm hoping
17 all those crimes factor in, and they go by the
18 guidelines, and I get a probation or a prison
19 sentence. Them crimes are not really part of my
20 plea bargain. My plea bargain was to be done with
21 this, to, in fact, show that I'm not part of this
22 organization anymore.

23 Q. And the plea bargain avoided your gun
24 charge altogether?

25 A. It avoided, yeah, the gun, and it avoided

1 the RICO. It avoided a lot of things. I got a
2 great benefit from it, no doubt.

3 MR. LOWRY: No further questions, Your
4 Honor.

5 THE COURT: Thank you, Mr. Lowry.

6 Any other defendant have cross-examination
7 of Mr. Montoya?

8 MS. JACKS: No, Your Honor.

9 THE COURT: Not hearing any, Mr.
10 Castellano, do you have redirect of Mr. Montoya?

11 MR. CASTELLANO: Yes, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. CASTELLANO:

14 Q. Mr. Montoya, I want to start at kind of
15 the end there where you were asked about an escape
16 conviction.

17 A. Yes, sir.

18 Q. Can you tell the members of the jury about
19 that escape?

20 A. It was a brand-new prison in Milan, New
21 Mexico. I was transferred there. I wanted to get
22 back to the Main facility where all the dope was.
23 And somebody told me, "If you threaten a warden that
24 you're going to escape, they'll take you back."

25 So I went and told the warden, I'm going

1 to escape. He told me, "Yeah, whatever. Go. You
2 don't tell us where to put you. We tell you."

3 And that day we went to the yard. And the
4 water had eroded a channel right under the fence.
5 It was like there was a hole in the fence. So
6 pretty much like on a dare, me and a friend of mine,
7 AB Archuleta, said, "You go." "No, you go."

8 So I went. And once I was on the other
9 side, I took off running and made my way to
10 Albuquerque.

11 Q. How long were you gone before you got
12 captured?

13 A. Five days.

14 Q. Now, when you were being asked about your
15 criminal history, you used a word "one-year bitch."
16 What does that term mean?

17 A. That's commonly referred to as the
18 Habitual Offender Act, and everybody calls it "the
19 bitch" for short, because --

20 Q. And so, in other words, do you have -- if
21 you have a conviction and you have a prior
22 conviction before that, can your sentence be
23 increased because of your prior convictions?

24 A. Then you would be a habitual offender
25 because of your priors and your sentences.

1 Q. You were asked about convictions going
2 back as far as 1993. What's your understanding
3 about whether that will count against you for
4 criminal history points?

5 A. I understand it will only go back 15
6 years.

7 Q. What's the relationship between Chris
8 Garcia and Mr. Baca?

9 A. They're brothers. Pup knows he's a rat.
10 Chris thinks he has everybody convinced that he's
11 not. There is paperwork on him. Everybody uses him
12 for money and drugs.

13 Q. Are they close in any way?

14 A. I think most of these guys would be close
15 to anybody that sends them money and dope, or if
16 they think they can control.

17 Q. Now, do you recall in the first recording
18 when Eric Duran and Mr. Baca first called you,
19 almost out of the gate, Santistevan's name is
20 mentioned? Do you remember that?

21 A. I don't remember the order of the phone
22 calls. But, yeah, he was mentioned in the phone
23 calls.

24 Q. And do you remember in that first
25 conversation -- if not, I can refresh your

1 recollection with the transcript -- in the first
2 conversation, do you remember that Mr. Baca had only
3 been in town -- or back in the state for about one
4 week?

5 A. Yeah, I remember that conversation.

6 Q. And so within one week, is it fair to say
7 that Mr. Baca is asking you to kill somebody?

8 A. Yeah, first week back.

9 Q. And out of the gate, did you have any
10 doubt that he, certainly at the beginning, wanted to
11 kill either Mr. Santistevan or Adam Vigil?

12 A. There is no doubt that he wanted to kill
13 somebody in administration or STIU.

14 Q. And by the time you picked up the firearm,
15 on November 29 of 2015 from Chris Garcia, was it
16 clear that the focus had become Gregg Marcantel?

17 A. Yeah, it appeared to be pretty clear to me
18 that that was -- he wanted the person hit that was
19 responsible for sending him out of state.

20 Q. Between you and Mr. Baca, who is the
21 leader and who is the soldier?

22 A. Oh, I think I would be the soldier, and I
23 think he would be the leader.

24 Q. So if Mr. Baca did not want Mr. Marcantel
25 hit, couldn't he have just ordered you not to do it?

1 A. Yeah, he ordered me not to. He ordered
2 all of us to leave Red alone when he got out. On
3 several occasions he told me, "Leave that guy
4 alone." Okay.

5 Q. And did the bargain you entered into with
6 the Government -- does it change what the recordings
7 say or do the recordings pretty much speak for
8 themselves?

9 A. The recordings speak for themselves. I
10 can't change them. You can't change them. Nobody
11 can change them. They're on tape, and they say what
12 they say.

13 Q. So do they change Mr. Baca's words?

14 A. No.

15 Q. What about Chris Garcia's?

16 A. No.

17 Q. What about Mandel Parker's?

18 A. Don't change any words. It's all spoken
19 words, and everybody is responsible for them.

20 Q. Now, you mentioned that there would be
21 times you would speak with Chris Garcia. And it
22 seems like there were things that he already knew
23 that you hadn't discussed with him. Do you remember
24 that?

25 A. Yeah, "Don't tell Chris nothing."

1 But when I get there, Chris is telling me,
2 "What the hell is wrong with them? They're stupid.
3 Which one do they want? That's the one I thought.
4 You know, you're dumb. What do they think? You're
5 going to end up in prison so long, you're going to
6 end up in the hole so long, you're going to forget
7 your name." Stuff like that. So obviously somebody
8 is telling him.

9 Q. Right. So are there other conversations
10 that Chris Garcia may have had with Mr. Baca that
11 you didn't hear?

12 A. I'm sure there was.

13 Q. So regardless of whose idea it was, was it
14 clear by November 29 of 2015 that Mr. Baca wanted
15 Mr. Marcantel killed?

16 A. Yeah. He would have been happy with any
17 one of them. But, yeah, Marcantel, I think, was the
18 one who was responsible for sending him out of
19 state.

20 Q. And by that time, was it also clear that
21 Chris Garcia wanted Mr. Marcantel killed?

22 A. I would say he provided the weapon and
23 gave me advice on how to get away with it, and plant
24 evidence and just direct the investigation. I would
25 say he wanted it to happen.

1 Q. And the same thing with Mandel Parker?

2 A. Yeah.

3 Q. And so are you the one who is running this
4 show, or are you just passing messages back and
5 forth between Mr. Baca, Mr. Garcia, and Mr. Parker?

6 A. I'm following instructions. I'm obviously
7 not running the show. You can hear the tapes, and
8 you can tell who is in command of the conversations.

9 MR. CASTELLANO: May I have a moment, Your
10 Honor?

11 THE COURT: You may.

12 MR. CASTELLANO: Pass the witness, Your
13 Honor.

14 THE COURT: Thank you, Mr. Castellano.
15 Do you have anything further, Mr. Lowry?

16 MR. LOWRY: Very briefly, Your Honor.

17 THE COURT: Mr. Lowry.

18 RECROSS-EXAMINATION

19 BY MR. LOWRY:

20 Q. We can all agree the tapes speak for
21 themselves; right?

22 A. I would say so.

23 Q. And the whole time these tapes were made,
24 Mr. Baca was in Level 6 at the PNM North; correct?

25 A. In the "really bad predator" predator

1 program at that point.

2 Q. That was nonresponsive.

3 A. Level 6 at the facility.

4 THE COURT: Hold on. I'll strike your
5 response. Listen to Mr. Lowry's question. And if
6 Mr. Castellano wants to bring out anything further.

7 The jury will disregard his answer.

8 THE COURT: Mr. Lowry?

9 A. I apologize.

10 BY MR. LOWRY:

11 Q. The whole time these calls were recorded,
12 Mr. Baca was at Level 6 at PNM North?

13 A. I believe so.

14 Q. The only way he could make a call out was
15 on the jail's phone system, which is recorded;
16 correct?

17 A. Or -- yes, or --

18 Q. Or Eric Duran's cellphone?

19 A. Yes.

20 Q. Which was wiretapped?

21 A. Yes.

22 Q. So every conversation Mr. Baca had would
23 be recorded?

24 A. Not necessarily. That's not the only
25 cellphone in that prison.

1 Q. Every phone conversation would have been
2 recorded; correct?

3 A. Every phone conversation upon the prison
4 phones would be recorded. Every phone conversation
5 on Eric Duran's phone would be recorded by -- Eric
6 Duran was not the only inmate that had a cellphone.

7 Q. How do you know how many people in Level 6
8 had cellphones?

9 A. I don't know how many --

10 Q. You don't, do you?

11 A. -- people had cellphones, but I know there
12 was more than one.

13 Q. How do you know that?

14 A. I've been there.

15 Q. So you can testify with certainty that in
16 November of 2015, Mr. Baca had access to a
17 cellphone?

18 A. I can tell you that if I was at the North
19 facility, probably about 98 percent chance that
20 somebody in that pod has a cellphone I can get my
21 hands on. Or if not that pod, the next pod. Or if
22 not that pod, the next pod.

23 Q. The most secure facility in the State of
24 New Mexico?

25 A. People -- yeah. You give them too much

1 credit.

2 Q. But my question to you is --

3 A. If there was a conversation on Crazo's
4 cellphone, it was recorded. If there was a
5 conversation on the pod cellphone, it was recorded.
6 But I'm telling you that there are cellphones in
7 that prison right now.

8 Q. You said you were following instructions?

9 A. Yes.

10 Q. You were following instructions from Team
11 America; right?

12 A. From Team America.

13 MR. LOWRY: No further questions, Your
14 Honor.

15 THE COURT: Thank you, Mr. Lowry.

16 Anything further, Mr. Castellano?

17 MR. CASTELLANO: No, Your Honor.

18 THE COURT: All right. Mr. Montoya, you
19 may step down.

20 Is there any reason Mr. Montoya cannot be
21 excused from the proceedings?

22 MR. CASTELLANO: No, Your Honor.

23 THE COURT: How about from the defendants?

24 Not hearing any, Mr. Montoya, you may be
25 excused from the proceedings.

1 All right. Is your next witness Eric
2 Duran?

3 MS. ARMIJO: Yes, Your Honor.

4 THE COURT: I'll have the STIU bring him
5 up to the gate there and then, Counsel, why don't
6 y'all approach?

7 (The following proceedings were held at
8 the bench.)

9 MS. ARMIJO: Your Honor, I think we
10 officially need to deal with the Eric Duran -- with
11 the conflict issue. We filed another conflict
12 motion regarding Marc Lowry at the beginning of the
13 trial.

14 THE COURT: I'm sorry, I thought I had
15 denied that motion.

16 MS. ARMIJO: No.

17 THE COURT: But it keeps coming up. But I
18 keep thinking I've already ruled on this, so I think
19 you're making a record. But I have in my mind
20 denied it, and thought I had been clear on that.
21 But I just didn't think it was the same subject
22 matter or a related subject matter, or that there
23 was any chance that there would be any use of
24 confidential information. So if I didn't make it
25 clear, I'll make it now that the motion is denied.

1 MS. ARMIJO: All right. We are going to
2 be bringing out the fact that there was that
3 lawsuit, who he was represented by. He was still
4 represented by his firm, I believe, when he became
5 an SNM member, because he would say he became an SNM
6 member in 2003. And if the defense is going to make
7 this a huge issue, like they did in opening, then I
8 think that that does, just for the record, cross the
9 line, because then we moved from -- and I don't have
10 the motion in front of me, but Section 2 to a
11 different section, where the Court would then make
12 the inquiry, if Mr. Donatelli was here in Marc
13 Lowry's place, would he be able to get into that.
14 And our position is: He isn't. So we'll raise the
15 issue again.

16 THE COURT: Well, approach me before you
17 get into the subject. I'm inclined to think that
18 what law firm brought the case is not relevant to
19 anything here. And if there is an issue about
20 either Rothstein or Lowry's involvement, I think
21 that should probably be outside of the presence of
22 the jury. And if we need to develop something, we
23 can. So just approach before you get into it,
24 because I'm not thinking, off the top of my head,
25 that the law firm itself is relevant.

1 MR. CASTELLANO: Just for the record,
2 there are some records in Eric Duran's, I believe,
3 STIU file which have the Donatelli firm's name on
4 there. I think there are probably checks or
5 something like that. So they are contained in his
6 prison files and in the STIU file.

7 THE COURT: Okay. All right.

8 MS. DUNCAN: Your Honor, we have some
9 objections to transcripts that they'll be using with
10 Mr. Duran. Some of them have been ruled on by the
11 Court before, and we just want to preserve them, so
12 we'll be asking for limiting instructions. I'm
13 working with Ms. Armijo on redactions. We're still
14 working. I just wanted to alert the Court.

15 THE COURT: The ones that I've already
16 ruled on, you're just preserving your objections to
17 them?

18 MS. DUNCAN: Yes. I think there are some
19 prior bad acts. The Court has overruled my
20 objection. But then there are, for example, two
21 transcripts where Eric Duran is talking about the
22 Molina allegations. Everything he's saying is
23 hearsay. He has no personal knowledge. So we're
24 going to ask the Court to have a limiting
25 instruction. I mean, I suppose it's admissible for

1 the purpose if Baca reacts to it, but not for the
2 truth of it. And then I think we just have some
3 smattering of objections, because there are a lot of
4 transcripts coming in through Mr. Duran.

5 THE COURT: Okay. See if you can give
6 those to me as soon as possible, so that I can be
7 prepared for them.

8 MS. DUNCAN: Do you think that you'll
9 start with the transcripts today?

10 MS. ARMIJO: Yes.

11 MS. DUNCAN: Okay.

12 THE COURT: If you can at least give them
13 to Ms. Standridge, I can start looking at them. So
14 the quicker you can get those. Do you have a sense
15 as to the order of the transcripts?

16 MS. DUNCAN: I don't.

17 THE COURT: Do you have a sense as to the
18 order, so they can give me, feed me --

19 MS. ARMIJO: I do, but it's all in my
20 notes. And I don't have -- and quite honestly, what
21 happened was, I think, that -- and correct me if I'm
22 wrong -- Ms. Duncan had assumed the redactions they
23 had requested had included all this, but they
24 hadn't. So we're dealing today with new requests
25 that she hasn't even given us yet for redactions.

1 THE COURT: Well, I am, too. Do you have
2 them in your notes? Let me -- Ms. Standridge, is
3 Mr. Duran waiting for us outside?

4 THE CLERK: Yes.

5 THE COURT: He is. All right. Well,
6 you'll just have to do the best you can. Write them
7 out and bring them to Ms. Standridge, and I'll try
8 to stay ahead of it.

9 (The following proceedings were held in
10 open court.)

11 THE COURT: All right. Ms. Armijo, it
12 looks like Mr. Duran is here. So I've told them
13 what I'm going to do.

14 All right. Mr. Duran, if you'll come up
15 to the witness box, and before you're seated, my
16 courtroom deputy will swear you in.

17 ERIC PRESTON DURAN,
18 after having been first duly sworn under oath,
19 was questioned, and testified as follows:

20 THE CLERK: Please be seated. State and
21 spell your name for the record.

22 THE WITNESS: Eric Preston Duran.

23 E-R-I-C, P-R-E-S-T-O-N, D-U-R-A-N.

24 THE COURT: Mr. Duran. Ms. Armijo.

25 MS. ARMIJO: Thank you, Your Honor.

1 DIRECT EXAMINATION

2 BY MS. ARMIJO:

3 Q. Mr. Duran, how old are you?

4 A. 40.

5 Q. And where were you born? What state?

6 A. In California.

7 Q. At some point did you come over to New
8 Mexico?

9 A. I did, ma'am.

10 Q. How old were you when you came to New
11 Mexico?

12 A. Age of 13.

13 Q. And did you come with any family?

14 A. I came with my mother.

15 Q. What part of the state did you move to?

16 A. Portales, New Mexico.

17 Q. Now, as a teenager, did you have any
18 problems with the law?

19 A. I did.

20 Q. And eventually did you find yourself, when
21 you were 18 years old, with a felony conviction?

22 A. Yes, ma'am.

23 MS. ARMIJO: And Your Honor, I believe
24 I'll admit without objection Exhibit Number 430 into
25 evidence.

1 THE COURT: Any objection?

2 MS. DUNCAN: No objection.

3 THE COURT: Not hearing any objection,
4 Government's Exhibit 430 will be admitted into
5 evidence.

6 (Government Exhibit 430 admitted.)

7 BY MS. ARMIJO:

8 Q. Now, were you initially, in 1997,
9 convicted of aggravated burglary?

10 A. Yes, ma'am.

11 Q. As a felony?

12 A. Yes, ma'am.

13 Q. And were you placed on probation?

14 A. Yes, ma'am.

15 Q. How old were you?

16 A. 19, I believe.

17 Q. And then when you were on probation, did
18 you pick up some additional charges?

19 A. Yes, ma'am.

20 Q. Now, I'm going to go to Exhibit Number
21 430. And if we could please display Bates 53372.

22 All right. Now, we're looking at a
23 conviction that you have. Do you recognize that?

24 A. Yes, ma'am.

25 Q. Okay. And does it appear that back on the

1 29th day of July of 1998, that you received two
2 felonies for aggravated assault on a peace officer,
3 which are third-degree felonies, the unlawful taking
4 of a motor vehicle, resisting arrest, and looks like
5 the misdemeanor was a High Court Misdemeanor, and
6 then concealing identity was dismissed; is that
7 correct?

8 A. Yes, ma'am.

9 Q. And then for that -- if you could go to
10 the next page, please -- were you subsequently for
11 all of those charges sentenced to a term of -- I am
12 looking here -- it says, "All counts shall run
13 consecutive to one another for a total of 10 and one
14 half years." Does that appear accurate?

15 A. Yes, ma'am.

16 Q. And so with that, were you sent to prison?

17 A. Yes, ma'am.

18 Q. And also the charge that we talked about
19 earlier, was that revoked and were you sentenced to
20 prison on that case, as well?

21 A. Yes, ma'am.

22 Q. And do you recall how long? And if not,
23 we can certainly look it up. Were you sent for one
24 and a half years on that first case, your very first
25 felony as an adult?

1 A. Yes, ma'am.

2 Q. Now, when you were sent to prison, where
3 was it that you were initially sent to; do you
4 recall?

5 A. The initial place I went to for jail?

6 Q. Right. Well, let me put it this way. You
7 were probably in jail before these charges were
8 adjudicated; is that right?

9 A. Correct.

10 Q. And then were you sent to prison?

11 A. Yes.

12 Q. To the New Mexico Corrections Department?

13 A. Yes, ma'am.

14 Q. And when, approximately, were you released
15 from doing that prison time?

16 A. In 2003.

17 Q. Did something happen to you while you --
18 when you went to prison, as far as an incident with
19 correctional officers?

20 A. Yes, ma'am.

21 Q. What happened?

22 A. I was assaulted by correctional officers
23 and I filed a lawsuit.

24 Q. When you say you were assaulted, what year
25 did it happen?

1 A. 1998.

2 Q. And where did it happen?

3 A. In Lea County, Hobbs, New Mexico.

4 Q. Was it a New Mexico correctional facility?

5 A. It was a privately ran prison.

6 Q. And --

7 A. Within New Mexico.

8 Q. Within New Mexico?

9 A. Yes, ma'am.

10 Q. And how many guards were involved?

11 A. At least eight.

12 Q. Did you receive any injuries?

13 A. I did.

14 Q. What kind of injuries did you receive?

15 A. I had a broken jaw, head injuries, and

16 back injuries.

17 Q. Now, you said that you filed a lawsuit

18 against those individuals?

19 A. Yes, ma'am.

20 Q. Were those individuals also prosecuted by

21 the federal government?

22 A. Yes, ma'am.

23 Q. And were they convicted?

24 A. Yes, ma'am.

25 Q. Did you receive a settlement as a result

1 of that incident by the State of New Mexico?

2 A. Yes, ma'am.

3 Q. How much did you receive?

4 A. I'm not sure if I'm even allowed to
5 disclose that amount.

6 Q. Well, is it in the discovery?

7 A. I signed a contract not to.

8 Q. Okay. Did you receive a substantial
9 amount from the Corrections Department?

10 A. Yes, ma'am.

11 Q. And when did you receive that money?

12 A. In 2002, August.

13 Q. Now, you were in prison; is that correct?

14 A. Yes, ma'am.

15 Q. Was it being handled for you by other
16 parties?

17 A. It was.

18 Q. Now, you indicated that you got out in
19 2003; is that correct?

20 A. Yes, ma'am.

21 Q. Before you got out in 2003, were you aware
22 of the SNM?

23 A. Yes, ma'am.

24 Q. What is the SNM?

25 A. A prison gang.

1 Q. And what does SNM stand for?

2 A. Sindicato de Nuevo Mexico.

3 Q. And when were you first aware of SNM?

4 A. When I initially came to prison, in 1998.

5 Q. When you first got in in 1998 -- well, let
6 me ask you this question before I go any further.

7 Are you now or were you ever a member of the SNM?

8 A. I was a member of the SNM.

9 Q. And when did you become a member of the
10 SNM?

11 A. In 2003.

12 Q. Now, you said that you were aware of them
13 in 1998. How so?

14 A. I met one of the members of the SNM at a
15 facility that I arrived to, which was the South.

16 Q. Okay.

17 A. PNM.

18 Q. Okay. And when you say "the South,"
19 you're talking about how PNM has two facilities, the
20 North and the South?

21 A. Correct.

22 Q. Now, how is it that you became a member in
23 2003?

24 A. I was brought in by high-ranking members.

25 Q. And who did that include?

1 A. Paul Martin and Oso Bear.

2 Q. And who was the other?

3 A. Oso Bear.

4 Q. Does Oso mean bear in Spanish?

5 A. Yes, ma'am.

6 Q. Now, are you aware of different qualities
7 that members have to offer the SNM?

8 A. Yes, ma'am.

9 Q. What would you say was your benefit to the
10 SNM? What did you bring to the table?

11 A. As far as being -- besides a soldier, just
12 the business, as I said earlier.

13 Q. When you were in prison up until 2003, did
14 you ever -- were you ever involved in the drug
15 business?

16 A. I was involved in the drug business.

17 Q. Tell the jury about that.

18 A. I sold, brought in drugs into facilities.
19 Sold drugs, made money. Helped out other members of
20 SNM with drugs. Helped them out with money, as
21 well.

22 Q. What is the SNM?

23 A. The SNM is an organization that's violent,
24 very territorial, operates from within the prison
25 system to society.

1 Q. Are they involved in any crimes?

2 A. They're involved in narcotics trafficking,
3 and intimidate and influence other smaller gangs by
4 murder and brutal assaults.

5 Q. Are there any rules within the gang?

6 A. There are several rules.

7 Q. What are some of the important rules?

8 A. I guess the Number 1 rule would be not to
9 cooperate, be a witness against the SNM; follow
10 order. If you're told to do something, you've got
11 to do it or the consequence will be death. You
12 can't leave the gang once you're initiated into the
13 gang, or the consequence would be death. No --
14 can't be a child molester or a rapist.

15 Q. Now, you mentioned that you were involved
16 in the drug-trafficking aspect of it. Did you ever
17 use drugs while you were in prison?

18 A. No, ma'am.

19 Q. And why is that?

20 A. Because --

21 Q. It's just something that you didn't get
22 into or --

23 A. I just never got into it.

24 Q. Now, you indicated that in 2003 you were
25 released; is that correct? Do you recall

1 approximately when?

2 A. I was released September 16 of 2003.

3 Q. Now, did you eventually make your way back
4 into prison after being let out in 2003?

5 A. Yes, ma'am.

6 Q. I'm going to go to again Exhibit Number
7 430. If we could please show Bates 53375.

8 I know that's kind of light. But can you
9 see that this is in a cause number that I believe is
10 in 2004 that indicates coming to court for a hearing
11 on February 28 of 2005 and -- there you go -- for
12 the count of murder in the second degree as an
13 accessory?

14 A. Yes, ma'am.

15 Q. Did you receive that conviction?

16 A. Yes, ma'am.

17 Q. All right. And did that involve -- why
18 don't you tell the jury what that incident involved.

19 A. It involved me being an accessory to
20 murder.

21 Q. And when you were out on the street, was
22 there an issue that arose with all the money that
23 you had received from Corrections?

24 A. Yes, ma'am.

25 Q. And eventually did it lead to somebody

1 being killed?

2 A. Yes, ma'am.

3 Q. Was it your understanding the victim in
4 this case was somebody that was trying to rip you
5 off?

6 A. Yes, ma'am.

7 Q. And how many years were you sentenced to
8 prison?

9 A. Fifteen.

10 Q. How many?

11 A. Fifteen.

12 Q. And did you subsequently -- I'm going to
13 53377. Just while we still have your convictions at
14 hand, did you also receive another felony conviction
15 for possession of a deadly weapon by a prisoner in
16 2013?

17 A. Yes, ma'am.

18 Q. All right. And what does this incident
19 involve?

20 A. It involves me having a weapon and being
21 caught with a weapon within my cell.

22 Q. Okay. Where were you at?

23 A. Southern New Mexico Correctional Facility.

24 Q. And why did you have a weapon?

25 A. I had a weapon. Based on what we're

1 taught as members of the SNM is to always keep a
2 weapon close for war.

3 Q. And did you basically receive an
4 additional term of incarceration and probation for
5 this incident?

6 A. Yes, ma'am.

7 Q. And I believe it was for an additional
8 year incarcerated; does that sound correct?

9 A. Yes, ma'am.

10 Q. So approximately -- you go back to the
11 Corrections Department in 2005. Does that sound
12 correct?

13 A. Yes, ma'am.

14 Q. And when you went into Corrections at this
15 point -- I believe you had indicated that you'd
16 become a member in 2003. Were you still a member of
17 the SNM?

18 A. Yes, ma'am.

19 Q. And in general -- you don't have to be
20 specific right now as far as years or anything
21 else -- but can you tell the jury the different
22 facilities you had been housed in over the years
23 with Corrections?

24 A. I've been housed at the correctional
25 facility, at Lea County Correctional Facility, which

1 is in Hobbs, New Mexico. That's where I initially
2 went in 2005. I've been housed at the North
3 facility at the Penitentiary of New Mexico and the
4 South facility at the Penitentiary of New Mexico.
5 I've been housed at the Santa Rosa Correctional
6 Facility in Santa Rosa, New Mexico. And I've been
7 housed at the Southern New Mexico Correctional
8 Facility here in Las Cruces.

9 Q. And I'm just going to go over a couple of
10 things during your stay there. At the different
11 facilities, have you ever been caught with
12 contraband; for instance, a cellphone?

13 A. I was caught with a cellphone and drugs at
14 PNM North facility in Santa Fe, New Mexico.

15 Q. And that cellphone was provided to you by
16 whom?

17 A. By an associate.

18 Q. It wasn't provided to you as far as any
19 sort of -- you weren't supposed to have it?

20 A. No, no.

21 Q. I'm assuming you weren't supposed to have
22 the drugs, et cetera?

23 A. No, ma'am.

24 Q. And did you receive discipline for that?

25 A. Yes, ma'am.

1 Q. At some point you indicated that you came
2 to Southern. When were you in Southern?

3 A. I've been to Southern twice. Which
4 occasion?

5 Q. Tell us about the number, which two
6 occasions those are.

7 A. I came to Southern New Mexico Correctional
8 Facility in 2006 and in 2013.

9 Q. Now, I'm going to ask you about a few
10 people. Do you know Daniel Sanchez?

11 A. Yes, ma'am.

12 Q. How do you know Daniel Sanchez?

13 A. I met Daniel Sanchez in 1998 at the
14 Penitentiary of New Mexico, South facility.

15 Q. And when you met him, do you know whether
16 or not he was an SNM Gang member?

17 A. He was an SNM Gang member.

18 Q. And did you have an opportunity to talk to
19 him during that time period?

20 A. Yeah, I spoke to him. I met him.

21 Q. "To your man"? Is that what you said?

22 A. No, I spoke to him and met him.

23 Q. Oh, spoke to him and met him. Sorry. And
24 do you see him in the courtroom today?

25 A. Yeah.

1 Q. Okay. You just pointed in the direction.
2 Can you describe what he's wearing?

3 A. He's wearing a blue suit with a red tie
4 and a light blue shirt.

5 Q. And where in the courtroom is he seated?
6 To your left?

7 A. Yes, ma'am.

8 MS. ARMIJO: May the record reflect
9 identification of the defendant?

10 THE COURT: The record will so reflect.

11 BY MS. ARMIJO:

12 Q. Now, when you met him, did he -- did
13 you -- in 1998, did you ever meet up with him again
14 during any other time period before you got to
15 Southern in 2013?

16 A. The next time I met up with him was in
17 2007.

18 Q. And where was that at?

19 A. The Penitentiary of New Mexico in Santa
20 Fe, at the North.

21 Q. And did you spend time with him other
22 times, as well?

23 A. Yeah, I spent quite a lot of time with
24 him.

25 Q. Did he ever tell you an incident regarding

1 him and a person named Rhino?

2 A. He told me about the incident that
3 happened between him and Rhino in 2012 at the PNM
4 South facility, where we were both housed together.

5 Q. And what did he tell you about that
6 incident?

7 A. He told me that he stabbed Rhino.

8 Q. Did he say when that was?

9 A. In 2006 or '05.

10 Q. Now, when you -- at any point when you
11 were housed with him or near him, do you know
12 whether or not he had any sort of leadership
13 responsibilities for SNM?

14 A. He was a leader in the SNM organization.

15 Q. He was one of the leaders?

16 A. He was one of the leaders. He was a role
17 model to me. I looked up to him.

18 Q. Did you consider yourself close to him?

19 A. Close enough to make him the godfather to
20 my daughter.

21 Q. Now, going to Carlos Herrera, do you know
22 Carlos Herrera?

23 A. Yes, ma'am.

24 Q. And how do you know Carlos Herrera?

25 A. Just being housed with him at different

1 facilities.

2 Q. Is he an SNM Gang member?

3 A. Yes, ma'am.

4 Q. Do you see him in the courtroom?

5 A. Yeah. He's right behind you.

6 Q. What's he wearing?

7 A. A striped shirt.

8 Q. What color is it?

9 A. White and blue.

10 MS. ARMIJO: May the record reflect the
11 identification of Carlos Herrera?

12 THE COURT: The record will so reflect.

13 BY MS. ARMIJO:

14 Q. Now, you indicated he was an SNM Gang
15 member. Did you used to ever do business with any
16 of his family members?

17 A. Yeah, I used to do business with his
18 mother.

19 Q. What kind of business?

20 A. I used to buy heroin from her.

21 Q. To use or to sell?

22 A. To sell.

23 Q. And when would you -- when was that?

24 A. I started buying heroin from her in 1998.

25 Q. And when did you stop buying heroin from

1 her, if you did?

2 A. I stopped buying heroin from her around
3 2004.

4 Q. Now, you were incarcerated during that
5 time; correct?

6 A. I was incarcerated up to 2003, so I had
7 bought heroin from her when I got out.

8 Q. Now, Rudy Perez. Do you know Rudy Perez?

9 A. I do.

10 Q. And is he in the courtroom today?

11 A. Yes.

12 Q. Where is he seated?

13 MR. VILLA: We'll stipulate.

14 THE COURT: Is that sufficient, Ms.
15 Armijo?

16 MS. ARMIJO: Yes.

17 BY MS. ARMIJO:

18 Q. When did you meet Rudy Perez?

19 A. I met Rudy Perez in 2015.

20 Q. Where at?

21 A. At the PNM North facility.

22 Q. And do you recall approximately when in
23 2015?

24 A. Approximately August.

25 Q. And you said it was at the North facility;

1 is that correct?

2 A. Correct.

3 Q. Is that where you were being housed?

4 A. Yes, ma'am.

5 Q. Do you know him or whether or not he is an
6 SNM Gang member?

7 A. He is an SNM Gang member.

8 Q. And I guess I should just ask: When you
9 were at that in 2015 and housed at the North
10 facility, were you being housed with other SNM Gang
11 members?

12 A. Yes, ma'am.

13 Q. Was it an SNM pod?

14 A. Yes, ma'am.

15 Q. Did you ever have conversations with Rudy
16 Perez?

17 A. I had one particular conversation with
18 Rudy Perez in the yard.

19 Q. In the yard?

20 A. Yes, ma'am.

21 Q. So would he come out to the yard at times?

22 A. He was out at this particular time, due to
23 a shakedown.

24 Q. And you say "shakedown." What are you
25 referring to?

1 A. The facility was shaken down, the pod that
2 we lived in, to look for contraband.

3 Q. When you say they're shaking it down, does
4 that mean that correctional officers basically are
5 going through all the property to look for
6 contraband?

7 A. Yes, ma'am.

8 Q. What did he tell you? "He" being Rudy
9 Perez.

10 A. He just let me know that, you know, he was
11 down to do whatever needed to be done, regardless of
12 his circumstances; which he was in a wheelchair at
13 the time. So he just wanted to let me know that he
14 was still able to do whatever he could do,
15 regardless of his restraint.

16 Q. Now --

17 MS. JACKS: Excuse me. Your Honor, we'd
18 ask that be limited.

19 THE COURT: All right. That statement
20 will be limited just in your considerations to the
21 charges against Mr. Perez and not against the other
22 three defendants.

23 BY MS. ARMIJO:

24 Q. Did he indicate anything to you about
25 underestimating?

1 A. Just underestimating his ability to put in
2 work due to his circumstances. And put in work, I
3 mean kill, if need be.

4 Q. Do you know somebody by the name of
5 Anthony Ray Baca?

6 A. Yes, ma'am.

7 Q. I'm sorry, I didn't ask this: Daniel
8 Sanchez, did he have a nickname in the gang?

9 A. Dan Dan, Country Dan.

10 Q. What about Carlos Herrera? Do you know
11 whether or not he had a nickname?

12 A. Lazy.

13 Q. Rudy Perez. Do you know if he had a
14 nickname?

15 A. Ru Dog.

16 Q. And Anthony Ray Baca. Do you know who
17 that is?

18 A. Yes, ma'am.

19 Q. Do you see him in the courtroom today?

20 A. Yes.

21 Q. And where is he?

22 A. In the back.

23 Q. What's he wearing?

24 A. A suit.

25 Q. What color?

1 A. Black, white, the tie.

2 MS. ARMIJO: May the record reflect
3 identification of Anthony Baca?

4 THE COURT: The record will so reflect.
5 BY MS. ARMIJO:

6 Q. Does he have a nickname within the gang?

7 A. Pup.

8 Q. And when was it that you met Pup?

9 A. I met Pup in 2013 at the Southern New
10 Mexico Correctional Facility here in Las Cruces.

11 Q. When you met him, were you aware of
12 whether or not he had a position within the gang?

13 A. I knew about his position and him being
14 well-respected within the organization while he was
15 out of state before he even came back, before I met
16 him.

17 Q. And then once you met him, were you able
18 to come to an opinion as to what position he would
19 have?

20 A. Immediately, as soon as he came to the
21 facility.

22 Q. And what position was that?

23 A. Commander in chief.

24 Q. Of?

25 A. The SNM organization.

1 Q. Now, you indicated that you were at
2 Southern. Do you recall approximately when you got
3 to Southern and when you left for the last time?

4 A. I got to Southern in 2013 of October -- of
5 October, I believe. Or 2012 of October. And I left
6 November 27 of 2013.

7 Q. And what led, if you are even aware, to
8 you being moved from Southern?

9 A. Being apprehended with a weapon that was
10 found in my cell.

11 Q. Is that the weapon that we saw the
12 conviction that you had for an additional year
13 incarceration and on probation?

14 A. Yes.

15 Q. Are you still on probation for that matter
16 right now?

17 A. Yes, ma'am.

18 Q. So they found you with a shank, and
19 eventually you were moved back north?

20 A. Yes, ma'am.

21 Q. And when I say "back north," I should say
22 to the North facility?

23 A. Yes, ma'am.

24 Q. Prior to you going and leaving in October
25 of 2013, did you have conversations with Anthony

1 Baca?

2 A. I had several conversations with Anthony
3 Baca.

4 Q. And how is it that you were able to have
5 conversations with him? Was he in the same pod or
6 were you near each other? Tell the jury about that.

7 A. We were able to have conversations when he
8 was outside during his rec time and he could get
9 pretty close to my window, my cell. We would write
10 huilas to each other, which are letters, just
11 expressing whatever is going on in the pod, or just
12 stuff that we would talk about. Business. Drugs,
13 business, that me and him had together.

14 Q. Okay. And when you talked business, did
15 you eventually ever have an opportunity to go to the
16 yard with him?

17 A. Yes, I went to the yard with him.

18 Q. Okay. Did you ever have any conversations
19 with him -- let me ask this: At some point after
20 the issue with the shank, with the weapon that was
21 found, were you placed in a different area at
22 Southern?

23 A. Yes, ma'am.

24 Q. Where were you placed?

25 A. In segregation.

1 Q. Where were you before you were placed in
2 segregation?

3 A. In population.

4 Q. What pod were you in?

5 A. I was in green pod.

6 Q. And then you were sent to discipline; is
7 that correct?

8 A. I was sent to disciplinary unit, yes,
9 segregation.

10 Q. And did you have any conversations with
11 Anthony Baca while there?

12 A. Yes, ma'am.

13 Q. Now, during all the times that you spoke
14 to Anthony Baca in 2013, did he ever have a
15 conversation with you regarding the potential that
16 he was going to be leaving Southern?

17 A. Yes, ma'am.

18 Q. Tell us about that.

19 A. He -- we would go to yard and segregation
20 together and discuss plans that he wanted to put in
21 place before he left the facility, one of the plans
22 being to murder Javier Molina.

23 There was another high-ranking official
24 member that was within our organization that was
25 also locked down with us. His name was Roy

1 Martinez; they call him Shadow. He was also in
2 segregation because he got caught with a weapon,
3 just like me. We would have meetings together and
4 discuss what he wanted done. And what he wanted
5 done was to push a hit towards New Mexico
6 correctional facility officials.

7 Q. Okay. And did he ever tell you, if
8 anyone, who he wanted to have hit? And when you say
9 "hit," what do you mean?

10 A. Hit, I mean killed.

11 Q. And who were those individuals?

12 A. There was three individuals that were
13 mentioned: Dwayne Santistevan, who was the STIU
14 director; Gregg Marcantel, who was the Secretary of
15 Corrections; and Dwayne Santistevan, Jr., which is
16 the son of the STIU director.

17 Q. Was there anyone -- did he tell you
18 anything as far as plans to try and get this
19 accomplished?

20 A. As far as plans to get -- yeah, his plan
21 was to send the assailants to murder Javier Molina,
22 comprehending that we would be locked down, the SNM
23 would be locked down as a group, as an organization.
24 And then there was two other members of the
25 organization that were about to be released to the

1 streets within a six-to-seven-month period, and he
2 would order them to carry out the assassination of
3 the correctional facility officials.

4 Q. Was there anybody -- you mentioned Javier
5 Molina. Did he indicate that he wanted that hit to
6 happen, as well?

7 A. Yes, ma'am.

8 Q. And you said that these conversations --
9 do you recall approximately when they took place?

10 A. These conversations took place in July and
11 the first week of August 2013.

12 Q. You indicated that he was in segregation
13 with you?

14 A. Correct.

15 Q. At some point, does he get shipped back up
16 north?

17 A. Yes, ma'am.

18 Q. And then later on, do you follow and go up
19 north as well?

20 A. Yes, ma'am.

21 Q. So you were not at Southern when Javier
22 Molina was killed in March of 2014?

23 A. No, ma'am.

24 Q. Where were you?

25 A. I was at the PNM North facility in Santa

1 Fe, New Mexico.

2 Q. I'm going to kind of jump forward a little
3 bit to late 2014. What is going on with you then?

4 You're still in corrections at PNM North?

5 A. Yes, ma'am.

6 Q. And are you still an SNM Gang member?

7 A. Yes, ma'am.

8 Q. Where were you? Were you being housed
9 with any other SNM Gang members?

10 A. I was. Yeah, a whole pod of SNM Gang
11 members.

12 Q. Had a lot of SNM Gang members that were
13 previously at Southern been moved up to the North?

14 A. Yes, ma'am.

15 Q. And were you in the pod with a lot of --
16 well, you were in a pod that was strictly PNM; is
17 that correct?

18 A. Yes, ma'am.

19 Q. So at some point, did you decide to reach
20 out to law enforcement to possibly cooperate with
21 law enforcement?

22 A. Yes, ma'am.

23 Q. Okay. Tell us about that.

24 A. In 2015, I asked to speak to the STIU
25 Captain, Captain Sapien, and asked him if he would

1 take me to speak to the FBI, because I felt that I
2 had valuable information that I felt that they
3 needed to know.

4 Q. And you said it was in 2015. Was that
5 early 2015?

6 A. Yes, ma'am.

7 Q. And did you immediately meet with the FBI,
8 or did it take a little bit of time?

9 A. It took about a week.

10 Q. Did you eventually meet with the FBI?

11 A. Yes.

12 Q. Why did you decide to do that?

13 A. I just felt like it was time for me to
14 make the right decision and change my life and do
15 the right thing. And I felt like the SNM was trying
16 to take lives of people, when they shouldn't be
17 taking lives of anybody. And I just wanted to go
18 against it.

19 Q. What was going on with SNM at the time? I
20 mean, were there still lockdowns going on, or were
21 they out in the yard? I mean, were there tensions?
22 Were things good? What was going on?

23 A. There was tension. It's an organization,
24 so there's always going to be tension in politics.
25 We were all locked down at the time, probably for a

1 year, a year and a half, maybe, we had been locked
2 down.

3 Q. Did you even -- had you started anything
4 to try and get out of lockdown?

5 A. A few of the SNM members, including
6 myself, had filed a lawsuit against the Department
7 of Corrections for cruel and unusual punishment
8 because we felt like we were being punished for an
9 action that happened outside of the facility that we
10 were being housed at. And we felt that we were
11 being locked down for a reason that we shouldn't be
12 locked down.

13 Q. You're referring to the Javier Molina
14 incident?

15 A. Yes, ma'am.

16 Q. And so when you say "a few of us," who
17 were you being -- if you know, who else came to this
18 decision to try and file a lawsuit against
19 Corrections?

20 A. I believe it was the whole pod, but I know
21 myself, Timothy Martinez, and Roy Martinez filed for
22 sure.

23 Q. Roy Martinez; what is his nickname?

24 A. Shadow.

25 Q. And did Shadow -- do you know whether or

1 not, at any point in time, he had a higher position
2 within the SNM?

3 A. He was a high-ranking official, yes,
4 ma'am.

5 Q. Were you housed by someone named Robert
6 Martinez? Or you may not recall.

7 A. Yes, ma'am.

8 Q. Who is Robert Martinez?

9 A. Robert Martinez is Baby Rob.

10 Q. And what was his position with the gang?

11 A. He was also a high-ranking official in the
12 organization.

13 Q. You mentioned Timothy Martinez. Was he
14 being housed up there in 2015 for at least part of
15 the time?

16 A. He would go back and forth.

17 Q. And between there and where, if you are
18 aware?

19 A. Here.

20 Q. Here, as in Southern New Mexico
21 Correctional Facility?

22 A. Yes, Southern New Mexico Correctional
23 Facility.

24 Q. So you decided to cooperate, and you met
25 with the FBI; is that correct?

1 A. Correct.

2 Q. And when you met with the FBI, in general,
3 did you tell them a variety of things?

4 A. Yes, ma'am.

5 Q. And what sort of things or topics did you
6 discuss with them?

7 A. I discussed the topic of the murder that
8 happened; the Javier Molina murder, the hit that Mr.
9 Baca wanted to conduct against New Mexico
10 correctional facility officials.

11 Q. Did you talk about the SNM in general and
12 SNM members?

13 A. I talked about some SNM members, yes,
14 ma'am.

15 Q. Would it be fair to say that -- and which
16 FBI agent did you meet with?

17 A. Katie.

18 Q. Would it be fair to say that was kind of
19 like an introductory meeting with her? Was it -- I
20 mean, you told her things, but how long had you been
21 an SNM Gang member?

22 A. I told her things, but it wasn't really
23 official that I was going to work with the FBI on
24 anything, if that's what you're asking me.

25 Q. Kind of. You told her about a variety of

1 things that you could assist with.

2 A. Yes, ma'am.

3 Q. And you'd been an SNM member since 2003,
4 so over 12 years; correct?

5 A. Yes, ma'am.

6 Q. Is it fair to say that in that first
7 meeting with Agent Katie Brusuelas, you were not
8 able to cover everything that had happened since you
9 were an SNM Gang member?

10 A. Yes, ma'am.

11 Q. Now, at some point, are you signed as an
12 FBI cooperator?

13 A. Yes, ma'am.

14 Q. And was she the initial agent that signed
15 you up?

16 A. Yes, ma'am.

17 Q. And as part of that, what was your initial
18 understanding as to what you could do?

19 A. Follow the law, for sure.

20 Q. I'm sorry?

21 A. Follow the law. Abide by the law.

22 Q. Abide by the law is one of the things they
23 wanted you to do; correct?

24 A. Yes.

25 Q. But since you were incarcerated, was there

1 a proactive thing that they asked you to do? For
2 instance, did they ask you to record anybody?

3 A. They asked me to record Robert Martinez,
4 which is Baby Rob; and Roy Martinez, which is
5 Shadow.

6 Q. And at this point in time when you
7 initially had agreed to cooperate in recording
8 individuals, where was Anthony Baca?

9 A. Anthony Baca was out of state at this
10 time.

11 Q. And where were you housed -- and did you
12 agree to record?

13 A. Yes, ma'am.

14 Q. Okay. So -- and I don't want you to
15 describe any devices or anything, but were you
16 initially given a recording device by the FBI to
17 record Roy Martinez and Robert Martinez?

18 A. Yes, ma'am.

19 Q. And where were you housed in relationship
20 to where they were?

21 A. We were housed at the PNM North facility
22 in Santa Fe, New Mexico.

23 Q. Okay. And where was your cell in
24 connection to theirs, if you recall?

25 A. My cell was the middle cell, and they were

1 on the opposite sides of me.

2 Q. The device that they gave you -- was it a
3 device that was battery-operated, or was it
4 electrical? What was the source of power?

5 A. It was an on-and-off device.

6 Q. And did you have -- who controlled the
7 on-and-off part of it?

8 A. Myself. I did.

9 Q. And when you say "on-and-off," did it
10 have -- was it operated by a battery source?

11 A. It was operated by a AAA battery.

12 Q. And did you record Robert Martinez and Roy
13 Martinez?

14 A. Yes, ma'am.

15 Q. At some point in time was a different
16 device ever given to you?

17 A. Exchanged, yes, ma'am.

18 Q. And did you have problems with the first
19 device, if you recall?

20 A. I was -- the devices they gave me had to
21 be -- they had to download the data information that
22 was already recorded onto it. So they would give me
23 a new one while they were downloading that one.

24 Q. So you would receive a new device to
25 record -- to continue your recordings?

1 A. Yes, ma'am.

2 Q. Now, when you're making recordings, did
3 you start out every time, when you turn it on, by
4 saying, "Today's date is May 12 and this is Eric
5 Duran in North facility?" Or would you just have to
6 turn it on?

7 A. Sometimes I would just have to turn it on,
8 and just depending, because, you know, you could
9 hear very well in those cells, so it would be kind
10 of hard for me to state my name and the time and
11 date without those individuals hearing me.

12 Q. And so were you aware of whether or not
13 all the conversations that you had were being
14 captured or whether or not there may have been times
15 that the battery was dead?

16 A. Really, I wasn't sure what was being
17 captured because I never heard the recordings after
18 I gave them the device.

19 Q. Did the correctional officers that housed
20 you, the day-to-day officers -- were they aware that
21 you were cooperating?

22 A. No, ma'am.

23 Q. Is it fair to say that very few people
24 within Corrections knew that you were a cooperator?

25 A. I would say two people knew.

1 Q. Now, at some point in time, was Anthony
2 Ray Baca returned to the state and placed next to
3 you?

4 A. Yes, ma'am.

5 Q. And do you recall when that was?

6 A. That was in October of 2015.

7 Q. At some point in time did you get a
8 different FBI agent to work with? You indicated
9 that it was Katie first. At some point in time were
10 you switched over to another agent?

11 A. I was switched over to Agent Acee in 2015
12 of May.

13 Q. And from that point on, did he -- was he
14 your primary person with the FBI to have contact
15 for, as far as the investigations?

16 A. Yes, ma'am.

17 Q. And did you sign a new contract with Bryan
18 Acee, FBI, if you recall?

19 A. Yes, ma'am.

20 Q. And did you continue to do recordings?

21 A. Yes, ma'am.

22 Q. At some point in time, in addition to
23 having a recorder, were you also provided with a
24 cellphone?

25 A. Yes, ma'am.

1 Q. Who provided you the cellphone?

2 A. Bryan Acee provided me the cellphone.

3 Q. Did you know, when you were given the
4 cellphone, that it had a wiretap on it?

5 A. Yes, ma'am.

6 Q. And did you agree to go ahead and use it?

7 A. Yes, ma'am.

8 Q. What was the purpose of the cellphone?

9 A. The purpose of the cellphone was to
10 conduct drug deals on the streets, with other SNM
11 members, and to utilize it to put Pup's plan into
12 play.

13 Q. Now, I believe it was 2008 that you had
14 been caught with a cellphone before?

15 A. Yes, ma'am.

16 Q. Is it highly unusual for an inmate to have
17 a contraband cellphone?

18 A. It depends on who you are. It wasn't
19 highly unusual for me to have one.

20 Q. Okay. You were caught with one before, in
21 2008; correct?

22 A. Yes, ma'am.

23 Q. Did you have others during the time that
24 you were in Corrections?

25 A. Yes, ma'am.

1 Q. Do you know if other inmates up at the
2 North from time to time would also have contraband
3 cellphones?

4 A. Very few.

5 Q. Now, you said, though, that for you it
6 wasn't uncommon.

7 A. It wasn't uncommon, no, no.

8 Q. So you have a cellphone. In addition to
9 the cellphone, do you still have a recording device?

10 A. Yes, ma'am.

11 Q. A recording device. Is it one that you
12 operated and turned on and off, again, still?

13 A. Yes, ma'am.

14 Q. Now, we're going to October of 2015. You
15 indicated that Anthony Baca returned?

16 A. Yes, ma'am.

17 Q. And where was he placed?

18 A. Right next to me.

19 Q. And when he was placed next to you, did
20 you have an opportunity to talk to him?

21 A. Yes, ma'am.

22 Q. Now, with the other recordings, were you
23 able to then have both telephone conversations with
24 people that were recorded? Okay. You used the
25 cellphone that was provided to you; is that correct?

1 A. Correct.

2 Q. And let's talk about the cellphone. You
3 indicated that you were setting up drug deals. Did
4 you set up drug deals with Chris Garcia?

5 A. Yes, ma'am.

6 Q. And did you have conversations with Chris
7 Garcia?

8 A. Yes, ma'am.

9 Q. And I'm going to be specific. From
10 October through December 3, approximately, of 2015,
11 would you have conversations during that time
12 period?

13 A. Yes, ma'am.

14 Q. And you were aware that the cellphone that
15 you had was being -- that everything was being
16 captured on it?

17 A. Yes, ma'am.

18 Q. Did you do anything else, any other
19 conversations? You said Chris Garcia. Did you have
20 conversations with somebody by the name of Mario
21 Montoya?

22 A. Yes, ma'am.

23 Q. The time that you were having
24 conversations with Mario Montoya, did you know that
25 he was actually cooperating with the FBI, much like

1 yourself?

2 A. No, ma'am.

3 Q. Did you have -- you indicated that you --
4 let me ask you. What other people associated with
5 SNM did you have conversations with?

6 A. Besides Anthony Baca?

7 Q. Yes. On the phone. I mean, did you have
8 conversations with any of Anthony Baca's relatives?

9 A. I had conversations with his wife or
10 girlfriend, Yvonne; his cousin Claudette; his
11 mother.

12 Q. I'm going to stop you there because you
13 said three people. Claudette. You said that is
14 his --

15 A. His cousin.

16 Q. Is Claudette -- is she related in any way
17 to Chris Garcia?

18 A. She's Chris Garcia's girlfriend, I
19 believe.

20 Q. And when you say you had conversations
21 with her, when you had these conversations, was
22 Anthony Baca present for them, as far as in the cell
23 next door?

24 A. Yes, ma'am.

25 Q. And you indicated you had conversations as

1 well with Anthony Baca's mother and his girlfriend
2 or wife?

3 A. Yes, ma'am. Girlfriend, wife.

4 Q. And at whose directions were these
5 conversations?

6 A. Anthony Baca's.

7 Q. Did you have -- did you use the phone for
8 things that you weren't supposed to?

9 A. I used the phone, yes.

10 Q. Okay. Go ahead, tell us.

11 A. I just used the phone to make it seem as
12 real as I could, as if it was really my phone,
13 without it being too obvious that I was working with
14 the FBI. Such as just texting other women, sending
15 pictures of myself to women. Nothing explicit,
16 really.

17 Q. Send a selfie?

18 A. Maybe check the Fantasy Football stats.

19 Q. Were you at some point told not to use the
20 internet?

21 A. Yes, ma'am.

22 Q. All right. Now, when we're talking about
23 a phone, are we talking about, like, a brand-new
24 iPhone, or what type of phone was it?

25 A. It was a flip phone.

1 Q. Okay.

2 A. With a real small screen.

3 Q. Was it hard to send text messages?

4 A. It was hard to see text messages.

5 Q. So nothing high-dollar?

6 A. No.

7 Q. Now, so is it fair to say that you had --
8 in addition to the phone calls that were made, that
9 you made, you had the recorder as well; correct?

10 A. Correct.

11 Q. And was this the same situation where you
12 were not able to all the time say, Today's date is,
13 you know, such-and-such and I'm talking to Anthony
14 Baca?

15 A. Correct.

16 Q. Because that would have been obvious?

17 A. Yes, ma'am.

18 Q. Did you keep the recorder on the entire
19 time, or were you turning it on and off?

20 A. During the phone calls or --

21 Q. No, a recorder.

22 A. No, I would keep it on as long as I could,
23 as long as necessary without trying -- you know,
24 without wasting the battery life.

25 Q. Okay. Was it on 24/7, or would you -- at

1 some point would you just be talking with, for
2 instance, Anthony Baca, and then when you got into
3 things that you thought were relevant, would you
4 turn it on then?

5 A. Yes, ma'am.

6 Q. Okay. Which is it? Because I gave you
7 two examples.

8 A. I would try to conserve battery life. So
9 if whatever he was talking about wasn't really
10 relevant to anything that was happening as far as
11 SNM business or the case as far as the hit, then I
12 wouldn't turn it on. If he was just talking about
13 his mom being sick or something like that, I
14 wouldn't record that.

15 Q. And with that, I think I'm going to start
16 with the admission of, I believe --

17 MS. ARMIJO: If I may have a moment?

18 THE COURT: You may.

19 MS. ARMIJO: With Exhibit 368?

20 MS. DUNCAN: May we approach just a
21 moment, Your Honor?

22 THE COURT: You may.

23 (The following proceedings were held at
24 the bench.)

25 MS. DUNCAN: Your Honor, this is an

1 exhibit we haven't asked the Government to redact.
2 We just have a general objection to it. This
3 exhibit is discussing that rayo chart we've seen
4 before. It was clear from this transcript that it's
5 purely aspirational; that no part of this plan was
6 ever put into operation. So we've objected in the
7 past, and we renew that objection.

8 THE COURT: All right. Well, I'll allow
9 this into evidence. So this would be -- Exhibit 368
10 will be admitted into evidence.

11 (The following proceedings were held in
12 open court.)

13 (Government Exhibit 368 admitted.)

14 THE COURT: All right. Ms. Armijo.

15 MS. JACKS: And Your Honor, for the
16 record, we have the same objections that we had
17 earlier and would request a limiting instruction.

18 THE COURT: All right. These recordings
19 of Mr. Baca that are being made can only be
20 considered in your deliberations as to the charges
21 against Mr. Baca. They can't be used or considered
22 against either -- any of the other defendants in the
23 case.

24 MS. ARMIJO: And if we could start with
25 clip 1.

1 (Tape played.)

2 BY MS. ARMIJO:

3 Q. Mr. Duran, on the transcript -- and the
4 jury, I believe, has already been told several times
5 that the audio portion is what's important, as
6 opposed to the transcript. But the transcript is
7 just here to assist.

8 Now, there is a person there that says
9 "Pup." Who is that?

10 A. Anthony Baca.

11 Q. And it says "CHS." Who is that?

12 A. Myself.

13 Q. And in this conversation it appears that
14 you're talking about rayos and lieutenants and
15 carnals. What, in general, is this conversation
16 about?

17 A. He's describing the way that the
18 organization is going to function.

19 Q. Okay. And did he have a plan?

20 A. He's expressing his plan within these
21 recordings.

22 Q. Okay. And that is what we're listening to
23 right now?

24 A. Yes, ma'am.

25 Q. All right.

1 (Tape played.)

2 Q. He's mentioning different places and
3 putting people in positions. What did you take that
4 to mean?

5 A. The basis of what he's trying to explain
6 as far as the foundation that he wants to enforce is
7 only making people able to control their counties in
8 which each county that he just expressed as far as a
9 region. And the Zia symbol has the rayos, or all
10 the rays. So each county would be on there. And if
11 I was the lieutenant, then I would be able to
12 control only my region, and nobody else can control
13 my region or know what's going on within my region.

14 Q. All right. We'll continue.

15 (Tape played).

16 Q. Just really quick, I have a couple of
17 questions. It says up there, "where they're at
18 inside the pinta." What is the pinta?

19 A. Prison system.

20 Q. And calles, for those that don't speak
21 Spanish. What does calles mean?

22 A. Streets.

23 (Tape played.)

24 Q. Okay, now, Mr. Duran, there was a mention
25 in this last portion that we played about "go

1 collect tribute from carnals." Do you know what
2 that's in reference to?

3 A. Yeah. Collect, like, taxes from other
4 members of the SNM organization.

5 Q. And then we're talking about feria. What
6 is feria?

7 A. Money.

8 Q. Then we're going to go to clip 2.

9 (Tape played.)

10 Q. What is it that you're doing here during
11 this part of the conversation? It sounds like
12 you're talking about a bunch of different places.

13 A. Talking about a variety of counties, and
14 he's teaching me the counties that I have no
15 knowledge to.

16 Q. Okay. And why are the different counties
17 important?

18 A. Because they represent a part of the ray
19 in the Zia symbol.

20 (Tape played.)

21 Q. Now, there is talk there about paying
22 tribute again and breaking off with \$50 a month.
23 What is that in reference to?

24 A. He's saying that there could be members
25 out there that don't really want to get involved in

1 trouble, but they can still pay tribute by donating
2 money towards the cause, the SNM organization.

3 Q. And is this people out on the street?

4 A. Yes, ma'am.

5 Q. Okay.

6 THE COURT: Ms. Armijo, would this be a
7 good time for us to take our evening break?

8 MS. ARMIJO: Sure, Your Honor.

9 THE COURT: All right. I appreciate your
10 hard work. I appreciate the way you've gone about
11 your task. I think I speak for the parties, the
12 lawyers and the Court.

13 All right. We'll see you back at 8:30 in
14 the morning. All rise.

15 (The jury left the courtroom.)

16 THE COURT: All right. We'll see y'all in
17 the morning. Thanks for your hard work.

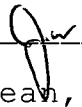
1 UNITED STATES OF AMERICA

2 STATE OF NEW MEXICO

3
4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages
8 constitute a true transcript of proceedings had
9 before the said Court, held in the District of New
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 4th day of February, 2019.

13
14 
15 Jennifer Bean, FAPR, RMR-RDR-CCR
16 Certified Realtime Reporter
17 United States Court Reporter
18 NM Certified Court Reporter #94
19 333 Lomas, Northwest
20 Albuquerque, New Mexico 87102
21 Phone: (505) 348-2283
22 Fax: (505) 843-9492
23 License expires: 12/31/19
24
25

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com